COMPANY MANAGEMENT

QUESTION 1

Explain the procedure for appointment and removal of Directors. Explain the legal position of a Director.

I'll answer this in **LL.M. 15-mark examination format**, with the **Companies Act, 2013 sections, headings and important case principles**.

1. Introduction

A **Director** is a person appointed to the Board of Directors of a company. Since a company is an artificial legal person and cannot act by itself, its affairs are managed through its **Board of Directors**.

Under **Section 2(34) of the Companies Act, 2013**, "Director" means a director appointed to the Board of a company.

Under **Section 149**, every company must have a Board of Directors consisting of individuals as prescribed by the Act.

2. Minimum Number of Directors

Under **Section 149(1)**:

- **Public company** → minimum **3 directors**
- **Private company** → minimum **2 directors**
- **One Person Company (OPC)** → minimum **1 director**

The maximum number is generally **15 directors**.

A company may appoint more than 15 directors by passing a **special resolution**.

3. Appointment of Directors

The principal provisions relating to appointment are contained in **Sections 152–172** of the Companies Act, 2013.

Section 152 — Appointment of Directors

Except where the Act provides otherwise, directors are appointed by the company in a **general meeting**.

4. Consent to Act as Director

A person proposed to be appointed as a director must give his consent to act as director in the prescribed manner.

The required declaration/consent is filed with the Registrar as prescribed.

5. Director Identification Number (DIN)

A person cannot be appointed as a director without complying with the requirement relating to **Director Identification Number (DIN)** under the Companies Act.

DIN provides a unique identification number for a director.

6. Qualifications of Directors

The Companies Act does not prescribe a general educational qualification for becoming a director.

However, the person must satisfy the statutory requirements and must not be disqualified under **Section 164**.

The Articles of Association may prescribe additional requirements, subject to the Act.

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7. Types/Special Categories of Directors

Important categories include:

1. First Directors

The Articles may provide for the first directors.

2. Additional Director — Section 161

The Board may appoint an additional director, subject to the statutory requirements.

3. Alternate Director — Section 161

An alternate director may be appointed for a director who is absent from India for the prescribed period.

4. Nominee Director — Section 161

A nominee director may be appointed where the Articles or applicable law permits nomination.

5. Independent Director — Section 149

Specified classes of companies must have independent directors as required by the Act.

6. Woman Director

Specified classes of companies are required to have at least one woman director.

8. Appointment by Board in Certain Cases

The Board may appoint certain directors in circumstances specifically permitted by the Act, including:

- additional directors;
- alternate directors;
- nominee directors.

These appointments are subject to the conditions prescribed by **Section 161**.

9. Retirement of Directors by Rotation

In a public company, the provisions relating to **retirement by rotation** apply to the extent prescribed by **Section 152(6)**.

Generally, not less than **two-thirds of the total number of directors** of a public company are liable to retire by rotation, subject to statutory exceptions.

At each AGM, approximately **one-third** of such directors retire.

The retiring director may be reappointed if the statutory requirements are satisfied.

10. Removal of Directors

The principal provision is:

Section 169 — Removal of Directors

A company may remove a director before expiry of his period of office by passing an **ordinary resolution**, subject to the statutory procedure.

However, the director must be given a reasonable opportunity of being heard.

11. Special Notice for Removal

A proposal to remove a director generally requires **special notice** under the Act.

The company must give the concerned director an opportunity to make a representation.

12. Opportunity of Being Heard

Before removal, the director has an important procedural safeguard.

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The director is entitled to:

- receive notice of the proposed resolution;
- make a written representation;
- have the representation circulated to members, subject to the statutory conditions;
- be heard at the meeting.

Thus, removal must follow **natural justice**.

13. Exceptions to Removal Under Section 169

Section 169 does not apply to certain situations, including specified categories of directors appointed by the Tribunal under the Act.

Therefore, removal must always be examined in light of the statutory exceptions.

14. Vacation of Office

Under **Section 167**, the office of a director becomes vacant in specified circumstances.

Examples include:

- incurring a statutory disqualification;
- absence from all Board meetings for the prescribed period;
- certain convictions/orders;
- violation of statutory requirements;
- other circumstances specified under Section 167.

15. Disqualification of Directors

Section **164** specifies circumstances in which a person becomes disqualified from appointment as a director.

Important grounds include:

- unsoundness of mind as declared by a competent court;
- insolvency;
- certain convictions;
- failure to pay calls;
- conviction for specified offences;
- company-related defaults specified by the Act.

16. Legal Position of a Director

The legal position of a director is important.

A director is **not merely an employee** of the company.

The courts have traditionally described directors as occupying a **fiduciary position** in relation to the company.

Depending on the circumstances, directors may be regarded as:

- agents of the company;
- trustees of company powers/property in a limited fiduciary sense;
- officers of the company.

17. Directors as Agents

A company is an artificial legal person and acts through its directors.

Therefore, directors act as **agents of the company** when exercising their powers on behalf of the company.

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However:

Directors are agents of the **company**, not normally agents of individual shareholders.

The company is the principal.

18. Directors as Fiduciaries

Directors occupy a **fiduciary position**.

They must:

- act honestly;
- act in good faith;
- act for the benefit of the company;
- avoid conflicts of interest;
- avoid making secret profits;
- exercise powers for proper purposes.

19. Directors as Officers

Under the Companies Act, directors are also treated as **officers of the company**.

Consequently, they may incur statutory liabilities for violations of the Companies Act.

20. Duties of Directors

Section **166** lays down the statutory duties of directors.

Important duties:

1. Good Faith

A director must act in good faith to promote the objects of the company for the benefit of:

- members as a whole;
- employees;
- shareholders;
- community;
- environment, as provided by the Act.

2. Proper Purpose

A director must exercise duties for a proper purpose.

3. Due Care and Skill

The director must exercise:

- due and reasonable care;
- skill;
- diligence;
- independent judgment.

4. Avoid Conflict of Interest

A director must not place himself in a position where his personal interest conflicts with the interests of the company.

5. No Undue Gain

A director must not obtain an undue advantage for:

- himself;
- relatives;
- partners;

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- associates.

If undue gain is obtained, the director must compensate the company to the extent prescribed.

21. Liability of Directors

Directors may incur liability for:

- breach of fiduciary duties;
- violation of Section 166;
- misstatements;
- fraud;
- negligence;
- statutory non-compliance;
- acts beyond their authority;
- breach of trust;
- failure to exercise due care.

However, a director is **not automatically personally liable for every debt of the company**. The company's separate legal personality generally protects directors from ordinary company liabilities unless a statutory or personal basis for liability exists.

22. Important Case Law

Percival v Wright

Directors generally owe their fiduciary duties to the **company**, rather than individually to shareholders, subject to particular circumstances.

Re Forest of Dean Coal Mining Co.

Directors are required to exercise reasonable care and skill in managing company affairs.

Howard Smith Ltd. v Ampol Ltd.

Directors must exercise their powers for a **proper purpose**.

Regal (Hastings) Ltd. v Gulliver

Directors occupying a fiduciary position cannot make secret profits from their position without proper authorisation.

23. Appointment vs Removal

Appointment	**Removal**
Mainly governed by Section 152 and related provisions	Section 169
Normally by company in general meeting	Generally by ordinary resolution
Consent/DIN requirements apply	Special notice and opportunity of being heard
Articles and Act must be followed	Statutory safeguards must be followed
Person becomes director	Director ceases office

24. Examination Flowchart

You can draw this in the examination:

Company

↓

Board of Directors

↓

Appointment — Section 152

↓

DIN + Consent + Eligibility

↓

Director

↓

Duties — Section 166

↓

Disqualification — Section 164

↓

Vacation — Section 167

↓

Removal — Section 169

25. Conclusion

Directors are the **central managerial organs of a company**. They occupy a fiduciary and statutory position and must exercise their powers honestly, carefully and for proper purposes.

The Companies Act, 2013 provides a comprehensive framework for their:

- appointment;
- qualifications;
- retirement;
- removal;
- disqualification;
- duties; and
- liabilities.

⭐ **Best conclusion for examination:**

"A director is not merely a person occupying an office but a fiduciary and statutory officer entrusted with the management of the company. The Companies Act, 2013 seeks to balance the managerial freedom of directors with accountability by prescribing requirements for their appointment and removal and by imposing statutory duties, particularly under Sections 152, 164, 166, 167 and 169."

🔥 **Sections to remember**

149 → Board composition

152 → Appointment of directors

161 → Additional/alternate/nominee directors

164 → Disqualification

166 → Duties

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167 → Vacation of office
169 → Removal of directors
173 → Board meetings

QUESTION 2
Explain the Procedure for Appointment and Removal of an Auditor
1. Introduction
An auditor is a person appointed to examine the accounts and financial statements of a company and to express an independent opinion on whether they present a true and fair view.
The principal provisions relating to auditors are contained in Chapter X of the Companies Act, 2013, particularly Sections 139 to 148.
2. Appointment of Auditor — Section 139
Every company is required to appoint an auditor or auditors in accordance with Section 139.
The auditor must be a person eligible under the Act and must give the required consent and eligibility certificate.
3. First Auditor of a Company
A. Company other than a Government Company
Under Section 139(6):
The first auditor is appointed by the Board of Directors within 30 days from the date of registration of the company.
If the Board fails to appoint the auditor within 30 days:
The members must appoint the auditor at an extraordinary general meeting within 90 days.
The auditor holds office until the conclusion of the first Annual General Meeting (AGM).
4. First Auditor of a Government Company
Under Section 139(7), the first auditor of a Government company is appointed by the Comptroller and Auditor-General of India (CAG) within the prescribed period.
If the CAG does not appoint the auditor within the prescribed period, the Board of Directors appoints the auditor.
5. Appointment at Annual General Meeting
Under Section 139, the auditor is generally appointed by the members at the AGM.
The auditor ordinarily holds office from the conclusion of that AGM until the conclusion of the sixth AGM, subject to the provisions of the Act.
Thus, the normal tenure is approximately five years.
6. Written Consent and Eligibility
Before appointment, the proposed auditor must provide:

- written consent to the appointment; and
- a certificate confirming that the appointment satisfies the eligibility requirements under the Companies Act.

The company must also ensure that the auditor satisfies the requirements of Section 141.
7. Eligibility of Auditor — Section 141

A person shall be eligible for appointment as auditor if he/she satisfies the qualifications prescribed by the Act.

Generally, a Chartered Accountant or a firm/LLP of Chartered Accountants meeting the statutory requirements may be appointed.

Where a firm or LLP is appointed, the prescribed majority of partners practising in India must be qualified for appointment as auditors.

8. Disqualifications — Section 141(3)

Certain persons cannot be appointed as auditors.

Important disqualifications include:

- an officer or employee of the company;
- a person who is a partner or employee of an officer/employee in prohibited circumstances;
- a person having prohibited financial interests;
- a person having prohibited business relationships;
- a person whose relative or partner has specified prohibited interests;
- a person indebted to the company beyond the statutory limit;
- a person who has given guarantee/security in prohibited circumstances;
- a person connected with a company having the prohibited subsidiary/associate relationship;
- a person providing certain prohibited services under Section 144.

9. Rotation of Auditors — Section 139(2)

For specified classes of companies, mandatory rotation of auditors applies.

An individual auditor generally cannot be appointed for more than one term of five consecutive years.

An audit firm generally cannot be appointed for more than two terms of five consecutive years.

After completing the prescribed tenure, the cooling-off provisions apply.

10. Casual Vacancy

A casual vacancy in the office of auditor is filled according to Section 139(8).

Where vacancy is caused by resignation:

The Board fills the vacancy within 30 days, but the appointment must also be approved by the company at a general meeting within the prescribed period.

Other casual vacancy:

The Board generally fills the vacancy within 30 days.

11. Removal of Auditor Before Expiry of Term

This is an important examination point.

An auditor appointed under Section 139 cannot simply be removed by the Board.

Under Section 140(1), an auditor can be removed before expiry of his term only after obtaining:

Step 1

Previous approval of the Central Government

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Step 2
An opportunity of being heard must be given to the auditor.
Step 3
After obtaining the approval, the company passes the required resolution at a general meeting.
Therefore:
Board alone cannot remove an auditor before expiry of his term.
12. Procedure for Removal
The procedure can be remembered as:
Board proposes removal
↓
Application to Central Government
↓
Central Government approval
↓
Opportunity of hearing to auditor
↓
General meeting
↓
Resolution
↓
Auditor removed
13. Resignation by Auditor
An auditor may resign from office.
Under Section 140(2), the auditor must file a statement indicating the reasons for resignation and other prescribed particulars.
The statement must be filed with the company and the Registrar within the prescribed period.
In the case of specified companies, the statement is also required to be filed with the CAG, where applicable.
14. Special Notice for Appointment of Another Auditor
Where a person other than the retiring auditor is proposed to be appointed, the statutory requirements relating to special notice may apply.
The retiring auditor has statutory rights to make representations regarding the proposal, subject to the provisions of the Act.
15. Rights of Auditor
An auditor has important statutory rights, including:
1. Right of Access
Under Section 143, the auditor has the right to access the books of account and relevant vouchers of the company.
2. Right to Information

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The auditor may require necessary information and explanations from officers of the company.

3. Right to Attend General Meetings

The auditor is entitled to receive notices of general meetings and attend them, and to be heard on matters concerning the auditor.

16. Duties of Auditor

The auditor must:

- examine the books and accounts;
- obtain necessary information and explanations;
- examine financial statements;
- form an independent opinion;
- prepare the audit report;
- comply with auditing standards;
- report matters required by law;
- report fraud in accordance with Section 143(12), where applicable.

17. Auditor's Report

Under Section 143, the auditor must make a report to the members on the accounts examined by him.

The report should state whether, in the auditor's opinion:

- financial statements give a true and fair view;
- proper books have been maintained;
- information and explanations necessary for the audit have been obtained;
- the financial statements comply with applicable accounting standards;
- other statutory requirements have been complied with.

18. Auditor and Prohibited Services — Section 144

An auditor cannot directly or indirectly provide certain prohibited non-audit services to the company.

Examples include:

- accounting and book-keeping services;
- internal audit;
- design and implementation of financial information systems;
- actuarial services;
- investment advisory services;
- investment banking services;
- outsourced financial services;
- management services;
- other services prescribed by law.

The purpose is to maintain the independence of the auditor.

19. Penalty and Liability

An auditor can incur liability for:

- professional misconduct;

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- negligence;
- knowingly making false statements;
- failure to comply with statutory duties;
- fraudulent conduct;
- failure to report fraud as required.

The Companies Act provides penalties for contraventions.

20. Important Difference — Removal vs Resignation

Removal	Resignation
Initiated by company	Initiated by auditor
Section 140(1)	Section 140(2)
Central Government approval required	Auditor submits resignation statement
Auditor gets opportunity of being heard	Auditor voluntarily leaves office
General meeting procedure applies	Statutory filing requirements apply

21. Appointment vs Removal

Appointment	Removal
Section 139	Section 140
Normally by members at AGM	Before expiry requires statutory procedure
Consent and eligibility certificate	Central Government approval
Auditor's eligibility checked	Auditor must be given opportunity of hearing
Tenure governed by Act	Removal resolution required

22. Important Sections to Remember

Section 139

Appointment of auditors

Section 140

Removal, resignation and special notice

Section 141

Eligibility and qualifications

Section 142

Remuneration

Section 143

Powers and duties

Section 144

Prohibited non-audit services

Section 145

Auditor to sign audit reports

Section 146

Auditor to attend general meetings

Section 147

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Punishment for contravention
Section 148
Cost audit
23. Examination Flowchart
Company incorporated
↓
First Auditor
Board → within 30 days
↓
Subsequent Auditor
↓
Members at AGM — Section 139
↓
Consent + Eligibility
↓
Auditor
↓
Audit + Report — Section 143
↓
Removal before term ends
↓
Central Government approval
↓
Hearing to Auditor
↓
General Meeting
↓
Removal
24. Conclusion
The Companies Act, 2013 establishes an elaborate system for the appointment, tenure, removal and regulation of auditors to ensure independence and reliability in corporate financial reporting.
The requirement of Central Government approval for premature removal and the provisions concerning auditor rotation, independence and prohibited services are designed to prevent management from improperly influencing auditors.
⭐ Best conclusion for examination:
“The auditor occupies an important position in corporate governance as an independent examiner of the company's financial affairs. The Companies Act, 2013 therefore regulates appointment, rotation, removal, resignation, qualifications, duties and independence of auditors so as to protect shareholders, creditors and other stakeholders.”
🔥 Remember these sections:

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139 → Appointment
140 → Removal/Resignation
141 → Eligibility
143 → Powers & Duties
144 → Prohibited Services
147 → Punishment

QUESTION 3

Discuss the Rule of Sole Selling Agent

1. Introduction

A **sole selling agent** was a person appointed by a company to sell its products within a specified territory or market on an exclusive basis.

The provisions relating to sole selling agents were contained mainly in the **Companies Act, 1956**, particularly **Sections 294 and 294AA**.

Important for your LL.M. exam: This is largely a **Companies Act, 1956 topic** and should be written as an historical/legacy provision if it appears in an old question paper. The Companies Act, 2013 does not retain the same sole-selling-agent regime.

2. Meaning of Sole Selling Agent

A **sole selling agent** means a person who is appointed by a company, with or without remuneration, as its exclusive selling agent for the whole or substantially the whole of the company's products or services in a particular area.

The purpose was to entrust the marketing and sale of the company's products to one exclusive agent.

3. Appointment of Sole Selling Agent

Under the Companies Act, 1956, the appointment of a sole selling agent was subject to statutory restrictions.

The appointment had to be made in accordance with the provisions of the Act and the company's Articles.

The company was required to consider matters such as:

- the period of appointment;
- remuneration;
- terms and conditions;
- suitability of the proposed agent;
- interests of the company.

4. Period of Appointment

The appointment of a sole selling agent was subject to statutory limitations regarding the period for which the appointment could continue.

The object was to prevent companies from entering into excessively long exclusive arrangements that could adversely affect shareholders and the company.

5. Approval of Central Government

In specified circumstances, appointment or continuation of a sole selling agent required the approval of the **Central Government** under the Companies Act, 1956.

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The Central Government could examine whether the appointment was:

- in the interests of the company;
- reasonable;
- commercially justified;
- prejudicial to the interests of shareholders.

6. Restrictions on Appointment

The law imposed restrictions to prevent abuse of the sole-selling-agent arrangement.
The company could not freely appoint a person merely because he was closely connected with the management.
The statutory provisions were intended to ensure that the appointment was made in the **best interests of the company**.

7. Disclosure of Interest

Where the proposed sole selling agent had a relationship or interest connected with directors or management, the relevant interest had to be disclosed in accordance with the statutory requirements.
This was intended to prevent:

- conflict of interest;
- self-dealing;
- excessive remuneration;
- diversion of company profits.

8. Remuneration

The terms of remuneration of the sole selling agent were subject to the applicable statutory provisions and the agreement between the company and the agent.
Remuneration could take the form of:

- commission;
- salary;
- other agreed consideration.

The arrangement had to be commercially reasonable and consistent with the statutory framework.

9. Role and Functions

The principal functions of a sole selling agent included:

1. **Marketing the company's products.**
2. **Securing customers.**
3. **Maintaining distribution channels.**
4. **Promoting sales.**
5. **Representing the company in the assigned territory.**
6. **Collecting and transmitting orders.**
7. **Developing the company's market.**

10. Advantages of Sole Selling Agency

1. Efficient Distribution

A single agent could develop an organised distribution network.

2. Market Development

The agent could concentrate on expanding the company's market.

3. Better Control

The company could coordinate sales through one principal channel.

4. Specialised Marketing

A specialised selling agent could possess market knowledge and commercial expertise.

11. Disadvantages

The system could also create problems:

- excessive dependence on one agent;
- possibility of exploitation;
- conflict of interest;
- excessive commission;
- concentration of selling power;
- possible favouritism towards connected persons.

Therefore, statutory restrictions were imposed.

12. Why Did the Law Regulate Sole Selling Agents?

The principal objective was to protect:

- shareholders;
- creditors;
- consumers;
- the company itself.

The law attempted to ensure that the arrangement was not used by directors to provide undue benefits to their relatives or associates.

13. Difference Between Selling Agent and Sole Selling Agent

Selling Agent	**Sole Selling Agent**
May be one among several agents	Has exclusive selling rights
No necessary exclusivity	Exclusivity is the essential feature
May operate in a limited market	Generally appointed for a specified territory/market
Company may appoint multiple agents	One exclusive agent controls the specified sales arrangement

14. Position Under Companies Act, 2013

This is **very important for your present preparation**.

The Companies Act, 2013 **does not contain the old detailed statutory regime governing sole selling agents under Sections 294 and 294AA of the Companies Act, 1956**.

Therefore, if this question appears in an old examination paper, begin your answer by stating:

"The concept of sole selling agent was specifically regulated under the Companies Act, 1956. The Companies Act, 2013 does not continue the same statutory framework."

Then explain the historical provisions.

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15. Conclusion

The statutory regulation of sole selling agents under the Companies Act, 1956 was intended to ensure that exclusive selling arrangements were not misused to the detriment of the company and its shareholders.

Although the old statutory regime has not been carried forward in the same form under the Companies Act, 2013, the topic remains relevant for understanding the development of Indian company law and for answering questions from older university papers.

⭐ Exam memory points

Companies Act, 1956

Section 294 → Appointment of sole selling agents

Section 294AA → Certain appointments requiring Government approval

Companies Act, 2013 → No equivalent detailed sole-selling-agent reg

QUESTION 4

State the different kinds of meetings in a company. What is the procedure to call a meeting of a company?

This is an important **15-mark Company Management question**. For the current Companies Act, 2013, the main provisions are **Sections 96–122** dealing with meetings and administration.

I. Different Kinds of Company Meetings

Company meetings can broadly be classified as follows:

1. Annual General Meeting (AGM)

Under **Section 96**, every company other than an OPC must hold an AGM every year.

Important requirements:

- First AGM: within **9 months from the close of the first financial year**.
- Subsequent AGM: within **6 months from the close of the financial year**.
- Not more than **15 months** should ordinarily elapse between two AGMs.
- AGM is normally held during business hours, 9 a.m. to 6 p.m., on a day other than a National Holiday.

The AGM deals with matters such as:

- consideration of financial statements;
- Board's report;
- auditor's report;
- declaration of dividend;
- appointment/reappointment of directors;
- appointment and remuneration of auditors.

2. Extraordinary General Meeting (EGM)

An EGM is a general meeting other than the AGM.

Under **Section 100**, the Board may call an EGM whenever necessary.

Members having the prescribed minimum voting entitlement can also requisition an EGM.

For a company having share capital, members holding at least **one-tenth of the paid-up share capital carrying voting rights** can requisition the meeting.
If the Board does not proceed to call the meeting within **21 days**, for a meeting to be held within **45 days**, the requisitionists may themselves call and hold the meeting within the statutory period.

3. Class Meetings

These are meetings of a particular class of shareholders, for example:
Preference shareholders' meeting.
They are generally held when the rights attached to a particular class of shares are proposed to be varied.

4. Creditors' Meetings

Meetings of creditors may be held in connection with:

- compromises;
- arrangements;
- reconstruction;
- amalgamation;
- liquidation/winding-up matters.

5. Debenture-holders' Meetings

These are meetings of holders of debentures/security holders to consider matters affecting their rights.

6. Board Meetings

Meetings of the **Board of Directors** are different from general meetings of shareholders.
They are governed mainly by **Sections 173–175** and the applicable rules.

II. Procedure for Calling a General Meeting

The following steps should be written in the examination.

Step 1 — Authority to Call the Meeting

The meeting must be called by the competent authority.

AGM

Normally called by the **Board of Directors**.

EGM

May be called by the **Board** or, in the prescribed circumstances, by requisitioning members under Section 100.

Step 2 — Fix Date, Time and Place

The Board fixes:

- date;
- day;
- time;
- place;
- business to be transacted.

For an AGM, Section 96 contains specific requirements concerning timing and location.

Step 3 — Prepare Notice

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Section 101 — Notice of Meeting

A general meeting normally requires **at least 21 clear days' notice**.

The notice may be given in writing or through electronic mode as prescribed.

The notice must specify:

- place;
- date;
- day;
- hour;
- business to be transacted.

Step 4 — Send Notice to Persons Entitled

Notice must be given to:

1. every member;
2. legal representative of a deceased member;
3. assignee of an insolvent member;
4. every director;
5. auditor/auditors.

III. Statement of Explanatory Material

Section 102

For **special business**, an explanatory statement must generally accompany the notice.

It should disclose material facts necessary for members to understand the:

- nature;
- scope;
- implications

of the proposed business.

It also includes prescribed disclosures concerning the interests of directors, KMPs and their relatives.

IV. Shorter Notice

A meeting can be called with less than 21 clear days' notice if the statutory consent requirements are satisfied.

For an AGM, consent of at least **95% of the members entitled to vote** is required.

For other general meetings, the Act prescribes the applicable voting/consent thresholds.

V. Quorum

Section 103

A meeting cannot validly transact business unless the required **quorum** is present.

The quorum depends upon the type of company and number of members.

For example, for a public company:

- **5 members personally present** where the number of members does not exceed 1,000;
- **15 members** where the number exceeds 1,000 but does not exceed 5,000;
- **30 members** where the number exceeds 5,000.

For a private company, the statutory quorum is generally **2 members personally present**.

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VI. Appointment of Proxy

Section 105

A member entitled to attend and vote may appoint another person as his **proxy** to attend and vote on his behalf, subject to the Act and Articles.

A proxy generally cannot speak at the meeting and votes on a poll, subject to the statutory provisions.

VII. Chairman of the Meeting

A chairman is elected/conducts the meeting in accordance with the Act and Articles.

The chairman:

- regulates the meeting;
- ensures orderly proceedings;
- puts resolutions to vote;
- declares the result;
- exercises the powers provided by law.

VIII. Conduct of Business

The business specified in the notice is considered at the meeting.

Members may:

- discuss the proposed business;
- ask questions;
- propose resolutions;
- vote on resolutions.

IX. Voting

Voting may take place through legally permitted methods, including:

- show of hands;
- poll;
- electronic voting;
- postal ballot, where applicable.

X. Ordinary and Special Resolution

Section 114

Ordinary Resolution

The votes cast in favour exceed the votes cast against by members entitled to vote and voting.

Special Resolution

The Act requires the resolution to be passed by the prescribed **three-fourths majority** of votes cast by members entitled to vote and voting.

XI. Minutes of Meeting

After the meeting, proper **minutes** of the proceedings must be prepared and maintained in accordance with the Companies Act and applicable rules.

Minutes provide an official record of the proceedings and resolutions passed.

XII. Tribunal's Power to Call Meetings

Section 97

If a company defaults in holding its AGM, the **Tribunal** may, on application of a member, call or direct the calling of the AGM and issue consequential directions.

Section 98

Where it is impracticable to call or conduct a meeting in the normal manner, the Tribunal may order that the meeting be called, held and conducted in such manner as it considers appropriate.

📌 **Flowchart for Examination**

Board decides to call meeting

↓

Fix date, time & place

↓

Prepare agenda

↓

Issue 21 clear days' notice — Sec. 101

↓

Send notice to members, directors & auditor

↓

Explanatory statement for special business — Sec. 102

↓

Ensure quorum — Sec. 103

↓

Chairman conducts meeting

↓

Discussion & voting

↓

Ordinary/Special Resolution

↓

Record minutes

⭐ **Important Sections to Remember**

Section	Subject
96	AGM
97	Tribunal's power to call AGM
98	Tribunal's power to call other meetings
100	EGM
101	Notice of meeting
102	Explanatory statement
103	Quorum
104	Chairman

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Section	Subject
105	Proxy
106	Restriction on voting rights
107	Voting by show of hands
108	Voting through electronic means
109	Demand for poll
114	Ordinary & special resolutions
118	Minutes

Exam conclusion

Company meetings provide the principal mechanism through which shareholders exercise their statutory rights and participate in corporate decision-making. The Companies Act, 2013 regulates the calling, notice, quorum, conduct and voting at meetings so that corporate decisions are taken in a transparent and legally valid manner.

QUESTION 5

Explain the provisions of the Companies Act, 2013 relating to prevention of oppression and mismanagement in a company.

1. Introduction

The Companies Act, 2013 provides protection to **members and minority shareholders** against oppressive conduct and mismanagement of the affairs of a company.

The principal provisions are contained in **Chapter XVI, Sections 241–246**.

The object is to balance the principle of **majority rule** with protection of minority interests.

2. Meaning of Oppression

Oppression means conduct of the company's affairs in a manner that is:

- burdensome;
- harsh;
- wrongful or unfair;
- prejudicial to members or the company.

There must generally be continuing conduct showing unfair treatment rather than merely an isolated disagreement.

Example

If majority shareholders continuously exclude minority shareholders from management or manipulate the company's affairs to unfairly benefit themselves, it may constitute oppression.

3. Meaning of Mismanagement

Mismanagement refers to improper or inefficient management of the company's affairs which is prejudicial to:

- the company;
- its members;
- public interest.

Examples include:

- diversion of company funds;
- fraudulent transactions;
- reckless management;
- abuse of management powers;
- conduct prejudicial to the company.

4. Section 241 — Application to Tribunal

A member may approach the **National Company Law Tribunal (NCLT)** where the affairs of the company are being conducted:

1. in a manner prejudicial to public interest;
2. in a manner oppressive to a member or members;
3. in a manner prejudicial to the interests of the company.

Section 241 also covers certain material changes in management or control which are likely to result in prejudicial conduct.

The **Central Government** can also apply to the Tribunal where it considers that the company's affairs are being conducted in a manner prejudicial to public interest.

5. Who Can Apply? — Section 244

The right to apply under Section 241 is subject to the eligibility requirements of **Section 244**.

Company having share capital

An application may be made by:

- not less than **100 members**, or
- not less than **one-tenth of the total number of members**, whichever is less; or
- member(s) holding not less than **one-tenth of the issued share capital**, provided the calls and other sums due have been paid.

Company without share capital

Not less than **one-fifth of the total number of members** may apply.

Waiver

The **Tribunal may waive** these requirements to enable members to apply under Section 241.

6. Section 242 — Powers of Tribunal

If the Tribunal is satisfied that:

1. the company's affairs are being conducted in a manner prejudicial or oppressive to members, prejudicial to public interest or prejudicial to the company; **and**
2. winding up the company would unfairly prejudice the affected members, although the circumstances would otherwise justify a winding-up order on the just-and-equitable ground,

the Tribunal may make any order it considers appropriate to **bring the oppressive or prejudicial conduct to an end**.

7. Powers of NCLT under Section 242

The Tribunal has wide powers.

It may order:

1. Regulation of future affairs

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It may regulate the company's affairs in the future.

2. Purchase of shares

It may order purchase of shares/interests of members by:

- other members; or
- the company.

3. Reduction of share capital

Where the company purchases its own shares, consequential reduction of share capital may be ordered.

4. Restriction on transfer of shares

The Tribunal may impose restrictions on transfer or allotment of shares.

5. Termination/modification of agreements

It may terminate, set aside or modify agreements between the company and directors/managers in appropriate circumstances.

6. Removal of directors

Appropriate directions may be made concerning persons responsible for oppressive or prejudicial conduct.

The statutory list is broader; the central idea is that the Tribunal can make effective orders to **end the oppressive or prejudicial conduct**.

8. Section 243 — Consequences

Where an order under Section 242 terminates, sets aside or modifies certain agreements, the affected managing director, director or manager may lose the right to claim compensation for loss of office in the circumstances specified by the Act.

A person whose agreement has been terminated or set aside may also be restricted from holding specified managerial positions for the statutory period, subject to the Tribunal's powers.

9. Section 245 — Class Action

Section 245 provides an additional remedy.

Members or depositors satisfying the statutory requirements may approach the Tribunal on behalf of the affected class where the company's management or conduct is prejudicial to their interests.

The Tribunal may, among other things, restrain the company from:

- committing an act **ultra vires** the MOA or AOA;
- breaching the MOA or AOA;
- acting upon a resolution obtained by suppression of material facts or misstatement;
- taking certain actions contrary to the interests of members or depositors.

Orders passed under Section 245 can bind the company and the relevant persons specified by the Act.

10. Difference Between Oppression and Mismanagement

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Oppression	Mismanagement
Mainly concerns unfair/oppressive treatment of members	Mainly concerns improper management of company affairs
Often affects minority shareholders	May affect company, members or public interest
May involve abuse of majority power	May involve fraud, negligence or reckless management
Section 241 remedy available	Section 241 remedy available
NCLT can grant relief under Section 242	NCLT can grant relief under Section 242

11. Important Features of the Remedy

A. Protection of Minority

The provisions prevent the majority from abusing its voting power.

B. NCLT as Adjudicating Authority

The **Tribunal** provides the statutory forum for relief.

C. Wide Discretionary Powers

The Tribunal can fashion appropriate remedies according to the circumstances.

D. Winding Up is Not Always Necessary

Instead of winding up the company, the Tribunal may make orders to correct the management and protect the affected members.

E. Public Interest

The Central Government can initiate proceedings where public interest is involved.

12. Important Sections

Remember these for examination:

Section 241 → Application for relief against oppression/mismanagement

Section 242 → Powers of Tribunal

Section 243 → Consequences of Tribunal's orders

Section 244 → Right/eligibility to apply

Section 245 → Class action

Section 246 → Application of certain provisions to proceedings

13. Examination Flowchart

Oppressive / prejudicial conduct

↓

Eligible member(s)

↓

Section 241

↓

Application to NCLT

↓

Section 242

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Tribunal examines circumstances

↓

Appropriate relief

↓

Regulation of company affairs / purchase of shares / restrictions / other orders

14. Conclusion

The provisions relating to oppression and mismanagement provide an important mechanism for **minority protection and corporate governance**.

The Companies Act, 2013 does not allow the principle of majority rule to become a means of oppression. At the same time, it seeks to avoid unnecessary winding up by empowering the NCLT to make suitable orders for protecting members and the company.

Therefore, Sections 241–245 constitute an important statutory framework for balancing majority control with minority protection and ensuring proper management of corporate affairs.

🔥 **For your exam, remember:**

241 → Apply

242 → NCLT Powers

243 → Consequences

244 → Eligibility

245 → Class Action

QUESTION 6

What is Dividend? Discuss the law relating to payment of dividend by companies.

1. Meaning of Dividend

The term **dividend** means the portion of a company's profits distributed among its shareholders.

Under **Section 2(35) of the Companies Act, 2013**, "dividend" includes **interim dividend**.

In simple terms:

Dividend = Distribution of profits by a company to its shareholders according to their rights in the company.

A dividend is generally payable only out of profits available for distribution in accordance with the Companies Act.

2. Types of Dividend

There are mainly two types:

A. Final Dividend

Final dividend is declared by the members at the **Annual General Meeting (AGM)** based on the recommendation of the Board of Directors.

B. Interim Dividend

Interim dividend is declared by the **Board of Directors** during the financial year before the final dividend is declared.

3. Declaration of Dividend — Section 123

The principal provision is **Section 123 of the Companies Act, 2013**.

Dividend can be declared or paid only in accordance with the provisions of the Act.
Generally, dividend may be declared out of:

1. **Current year's profits**, after providing for depreciation;
2. **Past undistributed profits**, subject to the prescribed rules;
3. Money provided by the Government or a State Government for payment of dividend in pursuance of a guarantee.

4. Depreciation Must Be Provided

Before declaring dividend, the company must provide for **depreciation** in accordance with the Companies Act.
Therefore:
Profit for dividend purposes cannot simply be calculated without providing the required depreciation.

5. Dividend Cannot Be Declared Out of Capital

The general principle is:
Dividend should be paid out of distributable profits and not out of the company's capital.
Capital is intended to provide security for creditors and sustain the company's business.

6. Declaration of Final Dividend

The Board recommends the dividend.
The members then declare the dividend at the AGM.
Important point:
The members **cannot normally declare a dividend higher than the amount recommended by the Board**.
They may declare:

- the amount recommended; or
- a lower amount.

7. Interim Dividend

Under **Section 123(3)**, the Board may declare interim dividend during a financial year.
The Board may declare interim dividend:

- during the financial year; or
- after closure of the financial year but before the AGM.

The amount must be determined with reference to the company's financial position and the statutory requirements.

8. Separate Bank Account — Section 123(4)

The amount of dividend, including interim dividend, must be deposited in a **separate bank account** within the prescribed period after declaration.
The amount should be used for payment of dividend to shareholders.

9. Payment of Dividend — Section 123

Dividend must be paid to the registered shareholder or to his order or to his banker, as permitted by law.
Where shares are jointly held, payment is made according to the applicable rules and the company's records.

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10. Time Limit for Payment — Section 127

Once dividend has been declared, it must generally be paid or the warrant dispatched within **30 days**.

Important:

Declared dividend → Payment within 30 days

11. Failure to Pay Dividend

Under **Section 127**, where a company fails to pay declared dividend or fails to post the dividend warrant within the prescribed period, the company and every director who is knowingly a party to the default may face statutory consequences.

The Act provides for:

- **interest on the amount in default**, and
- **penal consequences**, subject to the statutory exceptions.

12. Exceptions to Liability for Non-Payment

Section 127 recognises circumstances in which non-payment is not treated as a default. Examples include situations where:

- payment could not be made because of operation of law;
- shareholder gave directions that could not reasonably be complied with;
- there was a dispute regarding the shareholder's right to receive the dividend;
- the dividend was lawfully adjusted against amounts due from the shareholder;
- the failure was not due to the company's default.

These statutory exceptions are important in an examination answer.

13. Unpaid Dividend Account — Section 124

If a declared dividend remains **unpaid or unclaimed for 30 days**, the company must transfer the amount to a special bank account called:

Unpaid Dividend Account

The transfer must be made within the period prescribed under Section 124.

14. Notice to Shareholders

When an amount is transferred to the Unpaid Dividend Account, the company must prepare a statement containing the prescribed particulars of unpaid dividend and place it on its website and the website prescribed by the Central Government, where applicable.

The company must also take prescribed steps to inform the concerned persons.

15. Investor Education and Protection Fund — Section 124

If dividend remains unpaid or unclaimed for **seven years**, the amount is transferred to the: **Investor Education and Protection Fund (IEPF).**

The corresponding shares may also be transferred to the IEPF in accordance with the statutory requirements where dividend has remained unpaid/unclaimed for the prescribed period.

16. Claiming Dividend from IEPF

Transfer to IEPF does **not necessarily mean that the shareholder permanently loses the money**.

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A person entitled to the amount/shares can make a claim in accordance with the procedure prescribed under the Act and Rules.

17. Prohibition on Certain Dividend Payments

The company must comply with the statutory conditions before declaring dividend.

The company cannot use dividend as a means of distributing its capital contrary to the Companies Act.

The declaration must also take into account:

- accumulated losses;
- depreciation;
- applicable reserves requirements;
- financial position of the company.

18. Dividend from Reserves

Where a company has inadequate or no profits in a particular year, dividend may, subject to statutory conditions, be declared out of **accumulated profits transferred to reserves**.

The applicable rules prescribe conditions and limits for such declaration.

19. Dividend in Case of Inadequate Profits

The Companies Act and the applicable rules permit declaration of dividend in certain circumstances even where current profits are inadequate, subject to compliance with the prescribed conditions.

These conditions are intended to prevent companies from distributing excessive amounts when their financial position does not justify it.

20. Rights of Shareholders

Once a dividend is validly declared, it becomes a **debt due from the company** to the shareholder, subject to the applicable legal position.

The company cannot arbitrarily refuse to pay a properly declared dividend.

21. Dividend and Preference Shares

Preference shareholders ordinarily have a preferential right regarding dividend according to the terms of their preference shares.

Equity shareholders receive dividend after satisfying the rights of preference shareholders and subject to the company's distributable profits and the declaration of dividend.

22. Dividend vs Interest

Dividend	**Interest**
Return on shares	Return on loan/debt
Depends on declaration and distributable profits	Generally contractual/statutory obligation
Paid to shareholders	Paid to creditors/lenders
Not ordinarily payable unless declared	Payable according to the debt obligation

23. Important Sections to Remember

Section 2(35)

Definition of dividend

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Section 123

Declaration and payment of dividend

Section 124

Unpaid Dividend Account and IEPF

Section 125

Investor Education and Protection Fund

Section 126

Right to dividend, rights shares and bonus shares to be held in abeyance

Section 127

Punishment for failure to distribute dividends

24. Examination Flowchart

Company earns profit

↓

Provide depreciation

↓

Determine distributable profit

↓

Board recommends dividend

↓

Members declare final dividend

↓

Payment within prescribed period

↓

If unpaid/unclaimed

↓

Unpaid Dividend Account

↓

After 7 years

↓

IEPF

25. Important Distinction — Final vs Interim Dividend

Final Dividend	**Interim Dividend**
Declared by members at AGM	Declared by Board
Usually based on annual financial results	Declared during financial year
Board recommends	Board itself declares
Generally dealt with at AGM	No AGM declaration necessary
Section 123	Section 123

26. Conclusion

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Dividend represents the distribution of a company's distributable profits among its shareholders. The Companies Act, 2013 imposes safeguards to ensure that dividend is declared and paid only in accordance with law and without prejudicing the company's capital and creditors.

The provisions concerning **declaration, payment, unpaid dividend and transfer to IEPF** ensure that shareholders receive their legitimate entitlement and that unclaimed amounts are ultimately dealt with through a statutory mechanism.

⭐ **Best LL.M. conclusion:**

"The law relating to dividend seeks to strike a balance between the interests of shareholders and the financial stability of the company. While shareholders are entitled to receive a properly declared dividend, the company must ensure that dividend is paid only from legally available profits and in accordance with Sections 123 to 127 of the Companies Act, 2013."

🔥 **Remember these for the exam:**

2(35) → Dividend

123 → Declaration & payment

124 → Unpaid Dividend Account / IEPF

127 → Failure to pay dividend

Final dividend → Members

Interim dividend → Board

Declared dividend → generally payable within 30 days

QUESTION 7

Explain Allotment of Shares. Discuss the Statutory Restrictions and General Principles of Allotment of Shares.

1. Introduction

Allotment of shares means the appropriation of a certain number of shares to a person who has applied for shares in a company.

In simple words:

Application for shares → Acceptance by company → Allotment → Applicant becomes entitled to the shares.

Allotment creates a relationship between the company and the allottee and is an important stage in the issue of share capital.

2. Meaning of Allotment

Allotment is the **appropriation of unappropriated shares to a particular person**.

It must be made by the proper authority, normally the **Board of Directors**, subject to the Companies Act, the Articles of Association and applicable securities regulations.

Example

A company invites applications for **10,000 shares**.

A person applies for **500 shares**.

If the Board accepts the application and appropriates 500 shares to that applicant, an **allotment** has taken place.

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3. Important Requirements / General Principles

For a valid allotment, the following principles are important:

1. Proper Authority

Allotment must be made by the **competent authority**, generally the Board of Directors.

The Board must act within the powers given by:

- Companies Act;
- Memorandum;
- Articles;
- applicable rules.

2. Allotment Must Be Within a Reasonable Time

An allotment should be made within a reasonable period after receipt of the application.

An unreasonable delay may affect the legal position of the applicant.

3. Absolute and Unconditional

An allotment should ordinarily be **absolute and unconditional**.

If the applicant applies for shares subject to a particular condition and the company attempts to allot them on materially different terms, there may be no valid acceptance of the original application.

4. Communication of Allotment

The allotment must be **communicated to the applicant**.

Mere decision by the Board without proper communication does not complete the contractual process.

Communication may be made through the prescribed means, including electronic communication where permitted.

5. Allotment Must Be Bona Fide

The directors must exercise their power of allotment **in good faith and for a proper purpose**.

They must not allot shares merely to:

- manipulate voting power;
- create a particular majority;
- defeat existing shareholders;
- reward persons improperly.

6. Allotment Must Not Be Contrary to the Articles

The allotment must comply with the company's:

- Articles of Association;
- Memorandum;
- resolutions;
- applicable statutory requirements.

4. Statutory Restrictions on Allotment

The Companies Act, 2013 imposes several requirements depending upon the method of issue.

The important provisions include **Sections 39, 42, 62 and 23**, along with the applicable rules.

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5. Minimum Subscription — Section 39

Where a company invites the public to subscribe to its securities, the company must comply with the statutory requirements relating to **minimum subscription**.

Generally, shares cannot be allotted unless the required minimum subscription stated in the prospectus has been received.

If the minimum subscription is not received within the prescribed period, the money received from applicants must be dealt with according to the Act and applicable rules.

Principle:

No valid public allotment without satisfying minimum-subscription requirements.

6. Application Money

The prescribed amount of application money must be received and handled in accordance with the Companies Act and applicable securities regulations.

The company must comply with the statutory requirements regarding:

- collection;
- utilisation;
- refund where necessary.

7. Return of Allotment — Section 39(4)

Whenever a company having share capital makes an allotment of securities, it must file a **return of allotment** with the Registrar within the prescribed period.

The principal form is:

Form PAS-3 — Return of Allotment

The return contains prescribed particulars regarding the allotment.

8. Private Placement — Section 42

Where securities are issued through **private placement**, the company must comply with the special statutory requirements.

Important restrictions include:

- offer to identified persons in accordance with the Act;
- prescribed limit on the number of persons to whom the offer can be made in a financial year, subject to statutory exclusions;
- no public advertisement or general solicitation;
- money must be received through prescribed banking channels;
- securities must be allotted and reported within the prescribed period.

9. Private Placement Money

Money received through private placement must be kept in a separate bank account and dealt with according to **Section 42 and the applicable rules**.

It cannot be freely used for unrelated purposes until the statutory conditions are satisfied.

10. Preferential Allotment

A company may make a preferential issue subject to **Section 62(1)(c)** and applicable rules.

The company must comply with requirements such as:

- special resolution;
- valuation;

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- disclosures;
- prescribed conditions.

11. Further Issue of Shares — Section 62

Where a company proposes to increase its subscribed capital by further issue of shares, **Section 62** provides the statutory framework.

The main methods include:

A. Rights Issue

Shares are offered to existing equity shareholders in proportion to their existing holdings.

B. Employee Stock Option

Shares may be issued to employees under an ESOP subject to statutory conditions.

C. Preferential Issue

Shares may be issued to selected persons subject to the Act and prescribed conditions.

12. No Allotment in Contravention of Law

Directors cannot allot shares merely because they have power under the Articles.

They must also comply with:

- Companies Act, 2013;
- SEBI regulations where applicable;
- Securities Contracts laws where applicable;
- MOA and AOA;
- applicable listing requirements.

13. Allotment for Improper Purpose

The power to allot shares must be exercised for a **proper corporate purpose**.

If directors issue shares primarily to manipulate control of the company, the allotment can be challenged.

Important case:

Piercy v. S. Mills & Co. Ltd.

Directors issued shares with the objective of defeating an attempt to acquire control.

The court held that the power to issue shares must be exercised for a proper purpose and not merely to manipulate voting control.

14. Directors' Fiduciary Duty

Directors must act:

- honestly;
- in good faith;
- in the interests of the company;
- for proper purposes.

They must not use allotment as a means of obtaining a personal advantage or manipulating the company's ownership structure.

15. Allotment Must Not Be Fraudulent

If shares are allotted through:

- fraudulent statements;
- concealment of material facts;

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- manipulation;
- improper inducement,

the allotment may be challenged and statutory liabilities may arise.

16. Allotment and Prospectus

Where shares are offered to the public through a prospectus, the company must comply with the provisions governing:

- prospectus;
- disclosures;
- minimum subscription;
- application money;
- allotment;
- return of allotment.

Therefore, the allotment process is closely connected with the law relating to **prospectus and public issue**.

17. Restrictions on Public Issue

A company making a public issue must comply with the applicable provisions of the Companies Act and **SEBI's securities regulations**.

This includes requirements concerning:

- disclosures;
- application process;
- allotment;
- refund;
- listing, where applicable.

18. Irregular Allotment

An allotment made in violation of statutory requirements may result in:

- penalties;
- refund obligations;
- liability of directors/officers;
- challenge to the validity of the allotment;
- other consequences under the Companies Act and securities law.

The exact consequence depends on the nature of the violation.

19. General Principles — Summary

For examination, remember these **8 principles**:

1. Proper Authority

Allotment by competent authority.

2. Bona Fide

Must be made in good faith.

3. Proper Purpose

Must not be used to manipulate control.

4. Absolute and Unconditional

Acceptance should correspond to the application.

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5. Communication

Allotment must be communicated.

6. Statutory Compliance

Companies Act and applicable rules must be followed.

7. Proper Consideration

Required application/allotment money must be received.

8. Return of Allotment

Prescribed return must be filed with ROC.

20. Allotment vs Application

Application	**Allotment**
Made by applicant	Made by company
Request for shares	Appropriation of shares
Comes first	Comes after application
Does not by itself create membership	Creates entitlement to shares subject to law
Applicant makes offer	Company accepts/appropriates

21. Important Sections

Section 23

Public offer and private placement

Section 39

Allotment of securities

Section 42

Private placement

Section 62

Further issue of share capital

Section 63

Bonus shares

Section 64

Notice to Registrar regarding alteration of share capital

22. Examination Flowchart

Company invites applications

↓

Application for shares

↓

Application money received

↓

Board considers applications

↓

Allotment

↓

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Communication to applicant

↓

Issue/share records

↓

Return of Allotment — PAS-3

↓

ROC filing

23. Important Case Law

1. Sri Gopal Jalan & Co. v. Calcutta Stock Exchange Association Ltd.

The Supreme Court explained the concept of **allotment** as appropriation of shares out of the unappropriated share capital to a particular person.

2. Jain Mills & Electricals Ltd. v. State of Rajasthan

Illustrates principles concerning allotment and statutory compliance.

3. Piercy v. S. Mills & Co. Ltd.

Important for the principle that directors must not use share allotment powers for an improper purpose or merely to manipulate control.

24. Conclusion

Allotment of shares is an important stage in the process of issuing share capital. It must be made by the competent authority, in good faith, for a proper purpose and in compliance with the Companies Act, the company's constitutional documents and applicable securities regulations.

The power of allotment is a fiduciary power and cannot be used by directors as an instrument for manipulating the control or ownership of the company.

🔥 **Remember for exam:**

Allotment = Appropriation of shares

Section 39 → Allotment

Section 42 → Private placement

Section 62 → Further issue

PAS-3 → Return of allotment

Piercy → Improper purpose

Sri Gopal Jalan → Meaning of allotment

QUESTION 8

What do you mean by Floating Charge? When will a Floating Charge Crystallise?

1. Introduction

A **charge** is a security interest created by a company over its assets in favour of a creditor, usually to secure repayment of a loan or other debt.

A **floating charge** is a special type of charge that covers a **class of changing or circulating assets** of the company.

It allows the company to continue using and dealing with those assets in the ordinary course of business until the charge crystallises.

2. Meaning of Floating Charge

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A floating charge is a charge which:

1. extends over a **class of present and future assets**;
2. covers assets that are **constantly changing**;
3. allows the company to deal with those assets in the ordinary course of business; and
4. becomes fixed on particular assets when a specified event occurs.

Example

A manufacturing company creates a floating charge over:

"All present and future stock-in-trade."

The company can continue to:

- sell its existing stock;
- purchase new stock;
- replace old stock with new stock.

The charge continues to float over the changing stock.

3. Important Features of Floating Charge

1. It is over a class of assets

It normally covers a changing class such as:

- stock;
- raw materials;
- finished goods;
- book debts;
- receivables;
- other circulating assets.

2. Assets keep changing

The assets covered by the charge can change from time to time.

3. Company can deal with assets

Until crystallisation, the company can ordinarily:

- sell;
- replace;
- consume;
- acquire

assets covered by the charge in the ordinary course of business.

4. It becomes fixed on crystallisation

When the specified event occurs, the floating charge **crystallises** and attaches to the assets then within the charged class.

4. Floating Charge vs Fixed Charge

Fixed Charge	**Floating Charge**
Attached to specific asset	Covers a class of changing assets
Company cannot normally freely deal with asset	Company can deal with assets in ordinary business
Does not normally fluctuate	Fluctuates with changing assets

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Fixed Charge	Floating Charge
Example: charge on land/building	Example: charge on stock
No crystallisation in the same sense	Crystallises upon specified event

5. What is Crystallisation?

Crystallisation means the process by which a floating charge becomes a **fixed charge** over the assets within the charged class at the relevant time.

Before crystallisation:

Floating charge → changing assets

After crystallisation:

Fixed charge → assets then subject to the charge

6. When Does a Floating Charge Crystallise?

A floating charge generally crystallises when an event occurs which, according to the terms of the charge, causes it to become fixed.

The principal circumstances are:

1. Winding Up of the Company

When the company goes into liquidation/winding up, the floating charge generally crystallises.

The creditor's security then attaches to the relevant assets.

2. Cessation of Business

If the company **ceases to carry on its business**, the floating charge may crystallise.

The reason is that the company is no longer operating the business in the ordinary manner in which it was permitted to deal with the circulating assets.

3. Appointment of a Receiver

Where the terms of the charge permit crystallisation upon appointment of a **receiver**, the floating charge may crystallise when the receiver is appointed.

4. Default by the Company

If the company commits a specified default, such as:

- failure to repay the debt;
- failure to pay interest;
- breach of a covenant;

the charge may crystallise if the charging document provides for crystallisation upon that event.

5. Other Events Specified in the Charge

The terms of the security document may specify particular events that cause crystallisation. Therefore, the exact charging agreement must always be examined.

7. Effect of Crystallisation

Once the floating charge crystallises:

A. Company loses ordinary freedom of dealing

The company can no longer freely deal with the assets covered by the crystallised charge as it could before crystallisation.

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B. Charge attaches to assets

The charge becomes fixed upon the relevant assets within the charged class.

C. Creditor's security becomes fixed

The secured creditor obtains a fixed security interest over the relevant assets, subject to applicable insolvency law.

8. Leading Case — Illingworth v Houldsworth

This is an important case for explaining the nature of a floating charge.

The court described the characteristics of a floating charge as including:

- a charge over a class of assets;
- the class is changing from time to time;
- the company can deal with those assets in the ordinary course of business until crystallisation.

Principle:

A floating charge allows the company to continue dealing with the charged assets until the charge attaches to them on crystallisation.

9. Leading Case — Re Yorkshire Woolcombers Association Ltd.

This case is frequently cited for the characteristics of a floating charge.

The classic characteristics include:

1. The charge is over a class of present and future assets.
2. The class is changing from time to time.
3. Until crystallisation, the company may carry on its business and deal with the assets in the ordinary course.

10. Registration of Charge

Under the **Companies Act, 2013**, charges created by a company are subject to registration requirements.

Section 77

It is the duty of the company to register the charge with the Registrar within the prescribed period.

A floating charge is therefore not merely a contractual matter between the company and creditor; the statutory registration requirements must also be complied with.

11. Why Floating Charges Are Useful

Floating charges are particularly useful for companies having substantial:

- stock;
- receivables;
- inventory;
- circulating assets.

The company can continue its ordinary business without obtaining the creditor's permission every time an asset within the charged class is sold or replaced.

12. Disadvantages of Floating Charge

For creditors, floating charges may be less secure than fixed charges because:

- the assets remain under the company's control until crystallisation;

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- the value of the assets may fluctuate;
- insolvency law may affect the priority of the floating charge;
- preferential claims and statutory priorities may take precedence in certain circumstances.

13. Floating Charge — Simple Example

Suppose **ABC Ltd.** borrows ₹1 crore from a bank.

The bank takes a floating charge over:

"All present and future stock-in-trade of ABC Ltd."

ABC Ltd. can continue to:

Buy stock → Sell stock → Buy new stock → Sell new stock

The charge continues to float.

But if ABC Ltd.:

stops business / enters winding up / commits a specified default triggering crystallisation

the charge crystallises.

The stock covered by the charge at that time becomes subject to the fixed security.

14. Examination Diagram

Draw this:

Floating Charge

↓

Class of changing assets

↓

Company continues ordinary business

↓

Crystallising Event

→ Winding up

→ Cessation of business

→ Receiver appointed

→ Specified default

→ Other contractual event

↓

CRYSTALLISATION

↓

Charge becomes fixed

↓

Creditor's security attaches to relevant assets

15. Conclusion

A floating charge is an important form of security that enables a company to obtain finance against a changing class of assets while continuing to operate its business normally.

Its essential feature is that the charge **floats over the changing assets until crystallisation**. When a specified event occurs, such as winding up, cessation of business or a contractual default, the charge crystallises and becomes fixed upon the relevant assets.

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⭐ **Best LL.M. conclusion:**

"The floating charge reconciles two competing interests: it provides security to the creditor while allowing the company freedom to deal with its circulating assets in the ordinary course of business. Crystallisation converts this floating security into a fixed security when the circumstances specified by law or the security agreement arise."

🔥 **Remember for the exam**

Floating charge → changing class of assets
Company can deal with assets → before crystallisation
Crystallisation → floating becomes fixed
Main events → winding up, cessation of business, receiver, contractual default
Section 77 → registration of charges
Re Yorkshire Woolcombers → characteristics
Illingworth v Houldsworth → nature of floating charge

Q1. Explain Memorandum of Association with special reference to Registered Office Clause. Enumerate the procedure for alteration of Registered Office Clause.

1. Introduction

The **Memorandum of Association (MOA)** is the fundamental constitutional document of a company.

It defines the company's:

- constitution;
- scope of activities;
- powers and objects;
- relationship with the outside world.

Under the Companies Act, 2013, the Memorandum is dealt with principally under **Sections 4 and 13**.

A company cannot ordinarily act beyond the powers and objects contained in its Memorandum.

2. Meaning of Memorandum of Association

The MOA may be described as the **charter of the company**.

It defines the limits within which the company must operate.

Simple definition:

Memorandum of Association is the document which contains the fundamental conditions upon which a company is incorporated and which defines the scope of its activities.

3. Importance of MOA

The Memorandum is important because it:

1. Defines the company's objects.
2. Determines the scope of corporate powers.
3. Protects shareholders by restricting misuse of company funds.
4. Protects creditors by ensuring that company assets are used for authorised purposes.
5. Provides information to outsiders dealing with the company.
6. Forms the basis of incorporation.

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4. Contents of Memorandum — Section 4

The MOA generally contains the following clauses:

1. Name Clause

Specifies the name of the company.

2. Registered Office / State Clause

Specifies the **State in which the registered office of the company is to be situated**.

3. Objects Clause

States the objects for which the company is incorporated and matters necessary in furtherance thereof.

4. Liability Clause

States whether the liability of members is:

- limited by shares;
- limited by guarantee; or
- unlimited.

5. Capital Clause

States the authorised share capital and its division into shares, where applicable.

6. Subscription / Association Clause

Contains the declaration of subscribers agreeing to form the company and take the specified number of shares, as applicable.

5. Registered Office Clause

The registered office is the **official legal address of the company**.

It is important because it determines where statutory communications and notices can be served.

The company must have a registered office capable of receiving and acknowledging communications and notices.

6. Importance of Registered Office

The registered office is important for:

- receiving notices from the Government;
- receiving notices from the Registrar;
- service of legal documents;
- maintaining statutory records;
- determining the jurisdiction of the Registrar and other authorities;
- establishing the company's official legal address.

7. Situation Regarding Registered Office

A company must have a registered office from the prescribed stage after incorporation.

The company must furnish verification of its registered office to the Registrar in accordance with **Section 12**.

The registered office must remain capable of receiving communications during the prescribed business hours.

8. Change of Registered Office

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Changes in registered office are governed principally by **Section 12** of the Companies Act, 2013.

The procedure depends upon the nature of the change.

There are three important situations:

A. Change within the same city/town

B. Change from one city/town to another within the same ROC jurisdiction

C. Change from one ROC jurisdiction to another within the same State

A change from one State to another involves alteration of the **State clause of the Memorandum** and therefore requires the procedure under **Section 13**.

9. Change Within the Same City/Town

Where the registered office is shifted within the local limits of the same city/town, the company generally follows the procedure prescribed by the Act and applicable rules.

The Board passes the necessary resolution and the prescribed notice is filed with the Registrar.

10. Change from One City to Another Within Same ROC

Where the registered office is shifted from one city/town to another but remains within the jurisdiction of the same Registrar:

1. Board meeting is held.
2. Board approves the change.
3. Necessary resolution is passed.
4. Notice of change is filed with the Registrar in the prescribed form.
5. Registrar records the change.

11. Change from One ROC Jurisdiction to Another Within Same State

Where the proposed change moves the registered office from the jurisdiction of one Registrar to another Registrar within the same State, the company must follow the prescribed statutory procedure.

The company must make the required application to the **Regional Director** under the applicable provisions.

After approval, the prescribed filings are made with the concerned Registrars.

12. Change of Registered Office from One State to Another

This is the **most important part of this question**.

When a company shifts its registered office from one State to another, the **State clause of the MOA must be altered**.

The principal provision is:

Section 13 of the Companies Act, 2013.

13. Procedure for Altering the State Clause

Step 1 — Board Meeting

The Board of Directors considers and approves the proposal to shift the registered office from one State to another.

The Board also approves the proposed alteration of the MOA.

Step 2 — Notice of General Meeting

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The company issues notice to members for a general meeting.
The notice must comply with the statutory requirements.

Step 3 — Special Resolution

The members pass a:

Special Resolution

approving alteration of the registered office clause of the MOA.

Step 4 — Application to Central Government / Regional Director

The company makes the prescribed application to the competent authority for approval of the alteration involving change of State.
Under the present framework, the relevant authority is the **Regional Director**, subject to the Companies Act and Rules.

Step 5 — Creditors and Other Stakeholders

The company must comply with the prescribed requirements concerning:

- creditors;
- debenture-holders;
- other affected persons.

The purpose is to ensure that the change does not unfairly prejudice their interests.

Step 6 — Approval

The competent authority considers the application and may approve the alteration subject to statutory requirements.

Step 7 — Filing with Registrar

The order/approval and altered Memorandum are filed with the Registrar within the prescribed period.

Step 8 — Certificate / Registration of Alteration

The alteration becomes effective in accordance with the statutory provisions after the required registration by the Registrar.

14. Important Point

A change of registered office **from one State to another** is not merely an administrative change.
It involves alteration of the **Memorandum of Association** because the State of the registered office is stated in the Memorandum.
Therefore:

State-to-State shift → Alteration of MOA → Special Resolution → Statutory approval → ROC filing.

15. Difference Between Change of Address and Alteration of MOA

Change	**MOA alteration?**
Within same local limits	Generally no
From one city/town to another within same ROC	Generally no

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Change	MOA alteration?
From one ROC jurisdiction to another within same State	Procedural change; MOA State clause generally remains same
From one State to another	**Yes**

16. Effects of Alteration

Once the registered office is legally shifted:

- the new address becomes the company's official registered office;
- statutory communications are sent there;
- jurisdiction may change;
- statutory records are maintained as required;
- the company must update its records and relevant authorities.

17. Important Sections

Section 4

Contents of Memorandum

Section 12

Registered office of company

Section 13

Alteration of Memorandum

Section 14

Alteration of Articles

These sections are very useful to remember for this question.

18. Examination Flowchart

Board Meeting

↓

Proposal to shift registered office

↓

General Meeting

↓

Special Resolution

↓

Alter MOA State Clause

↓

Application to Regional Director / competent authority

↓

Approval

↓

File order & altered MOA with ROC

↓

Registered Office shifted

19. Conclusion

The Memorandum of Association is the **fundamental charter of a company**, defining its constitution and the limits of its activities. The registered-office clause identifies the State in which the company's registered office is situated.

While ordinary changes of registered office may be completed through the prescribed ROC procedure, a **State-to-State change requires alteration of the MOA under Section 13**, approval through the prescribed statutory mechanism and subsequent filing with the Registrar.

⭐ **Exam memory:**

Section 4 → MOA

Section 12 → Registered Office

Section 13 → Alteration of MOA

State-to-State → Special Resolution + statutory approval

Final step → ROC filing

QUESTION 5

Write a Note on the Status of a Company Secretary with Special Reference to His Duties

1. Introduction

A **Company Secretary** is an important managerial and compliance officer of a company. Under **Section 2(24) of the Companies Act, 2013**, "Company Secretary" or "Secretary" means a company secretary as defined in the **Company Secretaries Act, 1980**, who is appointed by a company to perform the functions of a company secretary under the Companies Act.

The Company Secretary plays an important role in:

- corporate compliance;
- Board and general meetings;
- maintenance of statutory records;
- communication with shareholders;
- compliance with company law and other applicable laws.

2. Legal Status of Company Secretary

The Company Secretary has a **dual character**.

He may be regarded as:

1. Officer of the Company

Under **Section 2(59)**, an "officer" includes a company secretary.

Therefore, the Company Secretary is an important statutory officer.

2. Key Managerial Personnel

Under **Section 2(51)**, a company secretary is included within the definition of **Key Managerial Personnel (KMP)**.

For prescribed companies, appointment of a whole-time company secretary is mandatory.

3. Agent of the Company

In relation to matters within his authority, the Company Secretary may act as an **agent of the company**.

However, he does not have unlimited authority and must act within:

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- the Companies Act;
- Articles;
- Board authorisation;
- applicable law.

4. Compliance Officer

The Company Secretary is particularly important as the person responsible for ensuring and facilitating compliance with company law and applicable corporate regulations.

3. Appointment of Company Secretary

Under **Section 203**, prescribed classes of companies must have whole-time KMP, including a:

Company Secretary

The appointment is made by the **Board of Directors** through a Board resolution.

The terms and conditions and remuneration are determined according to the applicable statutory requirements.

4. Qualifications

A Company Secretary must be a person who is a **member of the Institute of Company Secretaries of India (ICSI)**, subject to the statutory requirements.

He must possess the qualifications prescribed under the relevant law.

5. Duties of Company Secretary

The duties of a Company Secretary arise from the Companies Act, Rules, Articles, Board resolutions and other applicable laws.

The important statutory duties are contained particularly in **Section 205**.

Duty 1 — Report to the Board

The Company Secretary must report to the Board about compliance with the provisions of the Companies Act and other applicable laws.

He must ensure that the company follows the statutory requirements.

Duty 2 — Ensure Compliance

He must ensure that the company complies with:

- Companies Act;
- rules;
- applicable regulations;
- secretarial standards;
- other laws applicable to the company.

Duty 3 — Guide Directors

The Company Secretary should provide guidance to the Board of Directors regarding:

- legal requirements;
- corporate procedures;
- governance matters;
- statutory compliance.

Duty 4 — Facilitate Board Meetings

The Company Secretary plays an important role in:

- preparing Board meeting notices;

- preparing agenda;
- coordinating meetings;
- recording minutes;
- maintaining Board records.

Duty 5 — General Meetings

He facilitates:

- AGM;
- EGM;
- preparation of notices;
- circulation of documents;
- voting procedures;
- recording of minutes.

Duty 6 — Maintenance of Records

The Company Secretary is responsible for maintaining or facilitating maintenance of statutory records and registers as required by law.

Examples include:

- register of members;
- register of directors;
- minutes books;
- registers of contracts;
- other statutory registers.

Duty 7 — Filing with Registrar

The Company Secretary ensures timely filing of required documents and returns with the **Registrar of Companies (ROC)**.

Examples include:

- annual return;
- financial statements;
- changes in directors;
- resolutions;
- allotment-related filings;
- charges and other statutory filings.

Duty 8 — Compliance with Secretarial Standards

Under **Section 118(10)**, prescribed companies are required to observe the applicable **Secretarial Standards** issued by the Institute of Company Secretaries of India and approved by the Central Government.

The Company Secretary plays an important role in ensuring compliance with these standards.

Duty 9 — Advise on Corporate Governance

The Company Secretary assists the company in maintaining proper standards of:

- corporate governance;
- transparency;

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- accountability;
- ethical management.

Duty 10 — Communication with Stakeholders

The Company Secretary may act as an important link between:

- Board of Directors;
- shareholders;
- Registrar;
- regulatory authorities;
- other stakeholders.

6. Company Secretary as Compliance Officer

One of the most important modern functions is the **compliance role**.

The Company Secretary should identify statutory requirements and ensure that the company does not default.

Therefore, the Company Secretary is sometimes described as:

"The conscience-keeper of the company."

This expression is useful in an examination answer, although it is not itself a statutory definition.

7. Rights and Powers

The Company Secretary may:

- attend Board meetings;
- advise directors;
- sign and authenticate documents where authorised;
- issue notices;
- maintain statutory records;
- communicate with regulatory authorities;
- obtain necessary information from officers for compliance purposes.

His authority depends upon the Companies Act, Articles and Board authorisation.

8. Liability of Company Secretary

A Company Secretary may be personally liable where the Act specifically imposes liability on him or where he is responsible for a statutory default.

Liability may arise from:

- failure to comply with statutory requirements;
- false statements;
- fraudulent conduct;
- failure to make required filings;
- violation of statutory duties;
- non-compliance with applicable regulations.

However, a Company Secretary is **not automatically personally liable for every liability of the company** merely because he holds the office.

9. Company Secretary and Board of Directors

The relationship can be understood as:

Board of Directors

↓

Company Secretary

↓

Compliance + Advice + Administration

The Company Secretary **assists and advises the Board**, but does not replace the Board's statutory powers.

10. Important Sections

For examination, remember:

Section	Subject
2(24)	Company Secretary
2(51)	Key Managerial Personnel
2(59)	Officer
118	Minutes & Secretarial Standards
203	Appointment of KMP
205	Functions of Company Secretary

🔥 **Most important:**

Section 205 = Functions/Duties of Company Secretary

11. Examination Flowchart

Company Secretary

↓

Officer + KMP

↓

Compliance with Companies Act

↓

Advice to Board

↓

Board & General Meetings

↓

Statutory Records

↓

ROC Filings

↓

Corporate Governance

↓

Compliance Officer

12. Conclusion

The Company Secretary occupies an important position in modern corporate administration. He is not merely an administrative employee but a **statutory officer and, for prescribed companies, a member of Key Managerial Personnel**.

His principal responsibility is to ensure that the company conducts its affairs in accordance with the Companies Act, applicable regulations and corporate governance principles.

⭐ **Best LL.M. conclusion:**

"The Company Secretary occupies a unique position between the Board, shareholders and regulatory authorities. As a statutory officer and key managerial personnel, he plays a vital role in ensuring legal compliance, advising the Board, conducting meetings, maintaining statutory records and promoting good corporate governance. Section 205 therefore gives the office a significant place in the administration of a company."

🔥 **Remember for the exam:**

2(24) → Company Secretary

2(51) → KMP

2(59) → Officer

203 → Appointment

205 → Functions

118 → Secretarial Standards

QUESTION 8

Discuss in detail the Rule of Supremacy of Majority. Are there any exceptions to this rule? Explain.

1. Introduction

The **rule of majority** is a fundamental principle of company law.

A company is generally governed by decisions taken by the **majority of its members**, because it is not practical for every shareholder to agree to every corporate decision.

The classic rule is known as the:

Rule in Foss v. Harbottle

The principle is that where a wrong is done to the company, the **company itself** is generally the proper person to bring an action, and the court normally does not interfere with matters that can be decided by the majority according to the company's constitution.

2. Rule in Foss v. Harbottle

Facts

Two shareholders of Victoria Park Company alleged that the company's directors had misapplied company property.

They brought an action personally on behalf of themselves and other shareholders.

Decision

The court held that:

1. A wrong done to the company should ordinarily be remedied by the **company itself**.
2. The company is normally the proper plaintiff.
3. Courts should not interfere where the matter can be validly decided by the **majority of shareholders**.

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3. Main Principles

The rule in Foss v. Harbottle contains two important principles.

Principle 1 — Proper Plaintiff Rule

Where a wrong is committed against the company:

The company itself is the proper plaintiff.

Individual shareholders generally cannot sue personally for a wrong done to the company.

Principle 2 — Majority Rule

If an act can be validly approved or ratified by the majority of members, individual minority shareholders generally cannot ask the court to interfere.

Therefore:

The will of the majority generally prevails in corporate affairs.

4. Why Majority Rule is Necessary

Majority rule is important because:

- companies have many shareholders;
- unanimous consent would make decision-making difficult;
- business decisions require efficiency;
- shareholders voluntarily accept the company's constitution;
- courts should not ordinarily interfere with legitimate business decisions.

5. Example

Suppose a company has 1,000 shareholders.

A resolution is validly passed by the required majority.

A group of 10 shareholders disagrees with the decision.

They cannot ordinarily approach the court merely because they personally disagree with the majority.

The principle is:

Majority decision, if lawfully made, generally binds the minority.

6. Exceptions to Majority Rule

The rule is **not absolute**.

This is the most important part of the answer.

Courts have recognised exceptions where minority shareholders can seek judicial protection.

Exception 1 — Ultra Vires Acts

If the company proposes to undertake an act that is **ultra vires the company**, the minority shareholder can seek an injunction to prevent it.

Why?

Because an act beyond the company's legal powers cannot be validated merely by majority approval.

Example

If the MOA does not authorise a particular transaction and the majority attempts to approve it, a shareholder may challenge the transaction.

7. Exception 2 — Fraud on Minority

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Where the majority uses its power to commit a **fraud on the minority**, the rule does not prevent a minority shareholder from seeking relief.

Example

The majority shareholders transfer company property to themselves at an unfairly low price. The minority may challenge the transaction.

8. Exception 3 — Acts Requiring Special Majority

Where the Companies Act or Articles require a particular majority or special resolution, the majority cannot bypass that statutory requirement by using an ordinary resolution.

If the required procedure is not followed, minority shareholders may challenge the action.

9. Exception 4 — Personal Rights of Members

A shareholder can sue to protect his **personal rights as a member**.

Examples include:

- right to vote;
- right to receive notices;
- right to receive declared dividend;
- right to participate in meetings;
- other statutory membership rights.

These are personal rights and need not always be enforced through the company.

10. Exception 5 — Acts Contrary to the Companies Act

Where the majority's decision violates a statutory provision, the minority can challenge the action.

Majority rule cannot be used to override a mandatory provision of the Companies Act.

11. Exception 6 — Oppression and Mismanagement

The Companies Act, 2013 provides a specific remedy against:

- oppression;
- mismanagement;
- prejudicial conduct.

Under **Sections 241–242**, eligible members may approach the **NCLT**.

The Tribunal can grant wide relief to protect minority interests.

12. Exception 7 — Class Action

Under **Section 245**, members and depositors satisfying the statutory requirements may bring a **class action** before the Tribunal.

This is an important statutory exception to the traditional principle that the company itself should sue.

13. Exception 8 — Wrongdoers in Control of Company

Where the persons who control the company are themselves the wrongdoers, it may be impossible for the company to bring proceedings because the majority will prevent the company from suing.

In such circumstances, minority shareholders may be permitted to take action in accordance with the applicable exceptions and statutory remedies.

14. Exception 9 — Protection of Public Interest

Where corporate conduct affects **public interest**, statutory authorities and tribunals may intervene.

The principle of majority rule cannot be used as a shield for unlawful conduct affecting the public.

15. Important Cases

1. Foss v. Harbottle

Main rule: Company is the proper plaintiff and majority rule should ordinarily be respected.

2. Edwards v. Halliwell

Important case concerning exceptions to the rule, including acts requiring special majority and protection of individual/member rights.

3. Menier v. Hooper's Telegraph Works

Illustrates the principle concerning **fraud on the minority**.

4. Burland v. Earle

Reaffirmed the principle that the company is ordinarily the proper plaintiff for wrongs done to the company.

16. Majority Rule vs Minority Protection

The law attempts to maintain a balance:

Majority Rule

↓

Efficient corporate decision-making

BUT

↓

Minority Protection

↓

Prevention of oppression, fraud and illegality

Therefore, majority rule is **not a licence to abuse minority shareholders**.

17. Foss v. Harbottle and Oppression Remedy

The traditional rule in Foss v. Harbottle has been supplemented by modern statutory remedies.

Under the Companies Act, 2013:

Section 241

Application for relief against oppression and mismanagement.

Section 242

Powers of NCLT.

Section 244

Eligibility to apply.

Section 245

Class action.

These provisions provide substantial protection to minority shareholders.

18. Simple Examination Chart

You can draw:

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COMPANY

↓

Majority Rule

↓

Majority decision generally binds minority

↓

BUT exceptions:

→ Ultra vires acts
→ Fraud on minority
→ Special majority not followed
→ Personal/member rights violated
→ Companies Act violated
→ Oppression & mismanagement
→ Class action
→ Wrongdoers in control
→ Public interest

19. Important Sections to Remember

Section	Subject
13	Alteration of MOA
241	Oppression/mismanagement application
242	Tribunal's powers
244	Right to apply
245	Class action

And the most important case:

Foss v. Harbottle — Rule of Majority

20. Conclusion

The rule of supremacy of majority is necessary for the effective functioning of a company. Courts ordinarily respect decisions properly taken by the majority in accordance with the Companies Act and the company's constitutional documents.

However, majority rule cannot be used to justify **illegality, fraud, oppression or violation of individual shareholder rights**.

The law therefore provides exceptions and statutory remedies to protect minority shareholders.

⭐ **Best LL.M. conclusion:**

"The rule in Foss v. Harbottle establishes majority rule and the principle that the company is ordinarily the proper plaintiff for wrongs done to it. Nevertheless, the rule is not absolute. The law recognises exceptions for ultra vires acts, fraud on the minority, violation of personal rights, acts requiring special majority and statutory remedies relating

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to oppression, mismanagement and class action. Thus, modern company law seeks to balance majority control with effective minority protection."

🔥 **Exam memory formula**

FOSS → MAJORITY RULE

Exceptions:

U → Ultra vires

F → Fraud on minority

P → Personal rights

S → Special majority

L → Law/statutory violation

O → Oppression & mismanagement

C → Class action

Q2. Write the Difference Between Shareholders and Debenture Holders

1. Introduction

A company may raise finance through **share capital** and **borrowed capital**. Persons who contribute share capital are called **shareholders**, whereas persons who lend money to the company through debentures are called **debenture holders**.

Although both provide funds to the company, their legal position, rights and liabilities are substantially different.

2. Meaning of Shareholder

A **shareholder** is a person who holds shares in the share capital of a company and whose name is entered in the company's register of members, subject to the applicable law.

A shareholder is generally regarded as a **member/owner of an interest in the company**, but does not personally own the company's individual assets.

3. Meaning of Debenture Holder

A **debenture holder** is a person who holds a debenture issued by the company.

A debenture represents or evidences a **debt owed by the company**.

Therefore, a debenture holder is essentially a **creditor of the company**.

4. Differences Between Shareholders and Debenture Holders

Basis	**Shareholders**	**Debenture Holders**
1. Legal position	Members of the company	Creditors of the company
2. Nature of capital	Provide share capital	Provide borrowed/debt capital
3. Ownership	Have membership interest in the company	Have no membership interest merely by holding debentures
4. Return	Receive dividend	Receive interest
5. Nature of return	Dividend depends on declaration and applicable law	Interest is generally payable according to the terms of the debenture

Basis	Shareholders	Debenture Holders
6. Voting rights	Equity shareholders generally have voting rights	Normally no voting rights as debenture holders
7. Security	Shares are generally not a security over company assets	Debentures may be secured by a charge over company assets
8. Repayment	Share capital is not ordinarily repayable during the company's life except according to law	Debentures are generally repayable according to their terms
9. Priority on winding up	Shareholders rank after creditors	Debenture holders rank as creditors, subject to the nature and priority of their security
10. Risk	Generally greater risk	Generally lower risk than equity shareholders, particularly where secured
11. Management	Equity shareholders can participate in corporate decisions through voting	Debenture holders ordinarily do not participate in management
12. Transfer	Shares can be transferred subject to the Act and Articles	Debentures can generally be transferred according to their terms and applicable law
13. Control	Equity shareholders can influence company control through voting	Normally cannot control company management merely as debenture holders
14. Liquidation	Shareholders receive surplus, if any, after liabilities are satisfied	Debenture holders have creditor claims according to their priority
15. Return of capital	No fixed return on equity shares	Fixed interest is generally payable according to the debenture terms

5. Shareholders and Dividend

Shareholders do not automatically have an unconditional right to receive a dividend every year.

Dividend is declared and paid in accordance with the **Companies Act, 2013**, the company's Articles and applicable law.

Therefore:

Shareholder → Dividend

6. Debenture Holders and Interest

Debenture holders are entitled to interest according to the terms of the debenture.

Therefore:

Debenture holder → Interest

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The company's obligation to pay interest is generally independent of whether shareholders receive dividend.

7. Voting Rights

Shareholders

Equity shareholders generally have voting rights on company resolutions, subject to the Companies Act and the rights attached to their shares.

Debenture Holders

Debenture holders ordinarily do **not** have voting rights in the company's general meetings merely because they hold debentures.

8. Position on Winding Up

This is an important examination point.

When a company is wound up:

Creditors

Debenture holders, particularly secured debenture holders, have rights according to their security and the applicable insolvency/winding-up law.

Shareholders

Shareholders receive anything only after the company's liabilities have been satisfied and subject to the applicable order of distribution.

Therefore:

Creditors generally rank ahead of shareholders.

9. Security

Debentures may be:

Secured Debentures

Supported by a charge/security over company assets.

Unsecured Debentures

Not supported by a specific security.

Shares, on the other hand, do not ordinarily create a creditor's charge over company assets merely because the shareholder owns them.

10. Relationship with Company

Shareholder

The shareholder has a **membership relationship** with the company.

Debenture Holder

The debenture holder has a **creditor-debtor relationship** with the company.

This is the easiest distinction to remember.

11. Important Case — Bacha F. Guzdar v. Commissioner of Income Tax

The Supreme Court explained that a shareholder does not own the company's individual property.

The shareholder's rights arise from the shares and membership relationship.

Principle:

Ownership of shares does not amount to direct ownership of the company's assets.

This is useful when explaining the legal position of shareholders.

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12. Examination Formula

Remember:

SHAREHOLDER

Member → Share Capital → Dividend → Voting → Residual Interest

DEBENTURE HOLDER

Creditor → Loan Capital → Interest → Normally No Voting → Priority over Members

13. Conclusion

Shareholders and debenture holders both contribute funds to a company, but their legal positions are fundamentally different. A shareholder is a **member with an interest in the company**, whereas a debenture holder is a **creditor to whom the company owes a debt**. The shareholder generally bears greater entrepreneurial risk and participates in corporate control, while the debenture holder ordinarily enjoys a contractual right to interest and repayment according to the terms of the debenture.

⭐ **Best LL.M. conclusion:**

"The fundamental distinction is that shareholders constitute the membership and risk-bearing body of the company, whereas debenture holders constitute its creditors. Thus, shareholders participate in ownership and management subject to their rights, while debenture holders primarily possess contractual rights for interest and repayment."

🔥 **Exam memory**

Shareholder = Member

Debenture holder = Creditor

Shareholder = Dividend

Debenture holder = Interest

Shareholder = Voting rights

Debenture holder = Normally no voting rights

Creditor = Priority

Member = Residual interest

Q7. What is a Resolution of a Company? Explain the Different Kinds of Resolutions.

1. Introduction

A **resolution** is a formal decision of the members or the Board of Directors of a company taken in accordance with the Companies Act, 2013 and the company's Articles of Association.

Company decisions are generally expressed through resolutions passed at:

- Board meetings; or
- General meetings of members.

Resolution = Formal decision of the competent body of the company.

2. Meaning of Resolution

A resolution is a proposal placed before the competent meeting of the company which, after being properly considered and voted upon, is accepted according to the required majority. The Companies Act, 2013 mainly recognises **ordinary resolutions and special resolutions** under **Section 114**.

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3. Main Kinds of Resolutions

For examination purposes, the important kinds are:

1. **Ordinary Resolution**
2. **Special Resolution**
3. **Resolution requiring Special Notice**
4. **Board Resolution**

4. Ordinary Resolution

An **ordinary resolution** is one where the votes cast in favour exceed the votes cast against.

Formula:

Votes in favour > Votes against

The Act specifically provides this under **Section 114(1)**.

Example

Votes:

- For = 600
- Against = 400

Since 600 > 400, the resolution is passed as an ordinary resolution.

5. Matters Generally Passed by Ordinary Resolution

Examples may include matters where the Act does not specifically require a special resolution, such as certain:

- appointments;
- routine corporate decisions;
- approval of accounts and reports;
- other ordinary business of a company.

The exact requirement must always be checked against the relevant provision of the Act and Articles.

6. Special Resolution

A **special resolution** is a resolution for which:

1. the intention to propose it as a special resolution has been properly stated in the notice;
2. the required notice is given;
3. the votes cast in favour are at least **three times** the votes cast against.

Thus:

Votes in favour ≥ 3 × votes against

This is provided under **Section 114(2)**.

Example

Votes:

- For = 750
- Against = 200

Required: 200 × 3 = 600

Since 750 ≥ 600, the special resolution is passed.

7. Matters Requiring Special Resolution

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Important examples include:

1. Alteration of Memorandum

Certain alterations of the MOA require a special resolution.

2. Alteration of Articles

Alteration of Articles is generally made by special resolution under **Section 14**.

3. Change of Objects in Certain Circumstances

The Act requires special resolution for specified alterations of objects.

4. Reduction of Share Capital

Reduction of share capital requires a special resolution under **Section 66**, subject to Tribunal confirmation.

5. Buy-back

Certain buy-backs require approval by special resolution under **Section 68**, subject to statutory conditions.

6. Other Matters

Wherever the Companies Act expressly requires a special resolution, the company must follow that requirement.

8. Resolution Requiring Special Notice

A **special notice** is different from a **special resolution**.

Under **Section 115**, where the Companies Act or Articles require special notice, the intention to move the resolution must be given to the company by the prescribed number of members.

Under the present provision, the notice may be given by members holding:

- at least **1% of the total voting power**, or
- shares on which an aggregate sum not exceeding **₹5 lakh**, as prescribed, has been paid-up.

The company must then give notice of the proposed resolution to its members in the prescribed manner.

Important:

Special Notice ≠ Special Resolution

Special notice concerns the **notice procedure**, whereas special resolution concerns the **required voting majority**.

9. Board Resolution

A Board resolution is a decision taken by the **Board of Directors** at a Board meeting or otherwise in accordance with the Act.

Examples include decisions relating to:

- borrowing;
- investment;
- appointment of officers;
- opening bank accounts;
- issue of securities;
- approval of financial matters.

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Certain Board resolutions and agreements are required to be filed with the Registrar under **Section 117**.

10. Resolution Passed at Adjourned Meeting

Under **Section 116**, a resolution passed at an adjourned meeting is treated as having been passed on the **date on which it was actually passed**, and not on the date of the original meeting.

This is a useful additional point for an LL.M. answer.

11. Procedure for Passing a Resolution

The general procedure is:

Step 1

Competent authority decides to place the proposal before the meeting.

↓

Step 2

Notice of meeting is issued.

↓

Step 3

Agenda/resolution is placed before members or directors.

↓

Step 4

Discussion takes place.

↓

Step 5

Voting is conducted.

↓

Step 6

Required majority is determined.

↓

Step 7

Resolution is declared passed or rejected.

↓

Step 8

Minutes are prepared and preserved.

↓

Step 9

Where required, the resolution is filed with ROC.

Section 117 generally requires specified resolutions and agreements to be filed with the Registrar within **30 days** of passing/making them, subject to the statutory provisions.

12. Difference Between Ordinary and Special Resolution

Ordinary Resolution	**Special Resolution**
Section 114(1)	Section 114(2)

Ordinary Resolution	Special Resolution
Votes in favour must exceed votes against	Votes in favour must be at least 3 times votes against
Used for ordinary matters	Used for important statutory matters
Ordinary business generally	Fundamental/important corporate decisions
Lower voting threshold	Higher voting threshold

13. Difference Between Special Notice and Special Resolution

Special Notice	Special Resolution
Section 115	Section 114(2)
Concerns notice of intention to propose a resolution	Concerns voting majority
Given by prescribed members to company	Passed by prescribed majority
Does not itself mean resolution is passed	Resolution is actually passed by required votes
Example: certain director/auditor matters	Example: alteration of Articles

14. Importance of Resolutions

Resolutions are important because they:

- provide formal evidence of corporate decisions;
- ensure shareholder participation;
- establish authority for important transactions;
- protect minority shareholders;
- ensure compliance with the Companies Act;
- provide a proper record of corporate decisions.

15. Important Sections to Remember

Section	Topic
114	Ordinary & Special Resolutions
115	Resolutions requiring Special Notice
116	Resolutions at adjourned meetings
117	Filing of resolutions and agreements
118	Minutes of proceedings

🔥 **Most important:**

Section 114 = Ordinary + Special Resolution

Section 115 = Special Notice

Section 117 = Filing

16. Examination Diagram

PROPOSAL

↓

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NOTICE OF MEETING

↓

DISCUSSION

↓

VOTING

↓

Ordinary Resolution

For > Against

OR

Special Resolution

For ≥ 3 × Against

↓

RESOLUTION PASSED

↓

Minutes + ROC filing where required

17. Conclusion

A resolution is the formal mechanism through which a company expresses its decisions. The Companies Act, 2013 establishes different voting requirements depending upon the importance of the matter.

The distinction between an **ordinary resolution, special resolution and special notice** is particularly important in company law because failure to follow the prescribed procedure can affect the validity and enforceability of corporate decisions.

⭐ **Best LL.M. conclusion:**

"Resolutions constitute the formal expression of corporate decision-making. The distinction between ordinary and special resolutions ensures that routine matters can be decided efficiently while fundamental corporate changes receive a higher degree of shareholder approval. The provisions relating to special notice and filing further promote transparency, accountability and proper corporate governance."

🔥 **Exam memory**

Ordinary → For > Against

Special → For ≥ 3 × Against

Special Notice → Section 115

Filing → Section 117

Minutes → Section 118

Q8. What is Reconstruction and Amalgamation of a Company? Explain the Different Forms of Amalgamation.

1. Introduction

Companies may reorganise their business structure for various reasons, such as:

- financial difficulties;
- expansion of business;
- reduction of competition;

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- efficient management;
- consolidation of resources;
- revival of a sick company.

Two important forms of corporate reorganisation are **reconstruction** and **amalgamation**.
The principal statutory framework is found in **Sections 230–232 of the Companies Act, 2013**.

2. Meaning of Reconstruction

Reconstruction means reorganising the company's financial or corporate structure, usually without completely ending the underlying business.
It may involve:

- alteration of share capital;
- compromise with creditors;
- rearrangement of shareholders' rights;
- transfer of business to a new company;
- reduction of liabilities.

Simple definition:

Reconstruction is the reorganisation of the company's undertaking, capital, liabilities or ownership structure to place the business on a sounder basis.

3. Types of Reconstruction

Reconstruction may broadly be:

A. Internal Reconstruction

The same company continues to exist, but its financial structure is reorganised.
Examples:

- reduction of share capital;
- writing off accumulated losses;
- rearrangement of liabilities;
- alteration of rights attached to shares.

B. External Reconstruction

The existing business is transferred to a **new company**, and the old company is generally wound up.
The new company takes over the business, assets and liabilities according to the reconstruction arrangement.

4. Meaning of Amalgamation

Amalgamation means the combination of two or more companies into one entity pursuant to a scheme under the Companies Act.
The assets, liabilities, business and undertaking of the transferor company or companies are transferred to the transferee/resulting company in accordance with the approved scheme.

Simple definition:

Amalgamation is the combination of two or more companies into one corporate entity through a legally sanctioned scheme.

5. Difference Between Reconstruction and Amalgamation

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Reconstruction	Amalgamation
Reorganisation of an existing business/corporate structure	Combination of two or more companies
May involve one company	Normally involves two or more companies
Can be internal or external	Involves merger/combination
Main object is reorganisation	Main object is consolidation
May rearrange capital and liabilities	Assets and liabilities are combined/transferred according to scheme

---

6. Statutory Framework

The important provisions are:

Section 230

Compromise or arrangement with creditors and members.

Section 231

Power of Tribunal to enforce compromise or arrangement.

Section 232

Merger and amalgamation of companies.

Section 233

Fast-track merger.

Section 234

Merger or amalgamation of company with foreign company, subject to the prescribed requirements.

7. Role of NCLT

The **National Company Law Tribunal (NCLT)** plays a central role in schemes of:

- compromise;
- arrangement;
- merger;
- amalgamation;
- reconstruction.

The Tribunal examines whether statutory requirements have been complied with and whether the scheme is fair and lawful.

8. Procedure for Reconstruction/Amalgamation

Step 1 — Preparation of Scheme

The companies prepare a scheme containing details of the proposed:

- merger;
- amalgamation;
- reconstruction;
- transfer of assets and liabilities;
- consideration/share exchange ratio;

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- treatment of employees and creditors.

↓

Step 2 — Application to NCLT

An application is made to the Tribunal under the applicable provisions.

↓

Step 3 — Directions for Meetings

The Tribunal may direct meetings of:

- members;
- creditors;
- different classes of members/creditors.

↓

Step 4 — Notice

Notice of the scheme is given to members, creditors and prescribed regulatory authorities.

↓

Step 5 — Approval

The scheme must obtain the statutory approval of the relevant classes of members/creditors.

↓

Step 6 — NCLT Sanction

The Tribunal considers the scheme and may sanction it subject to compliance with law.

↓

Step 7 — Filing with ROC

The Tribunal's order and approved scheme are filed with the Registrar within the prescribed period.

↓

Step 8 — Scheme Becomes Effective

Upon satisfaction of the statutory requirements, the scheme takes effect according to its terms and the Tribunal's order.

9. Forms of Amalgamation

For examination, remember the following forms.

A. Amalgamation by Absorption

One existing company takes over another existing company.

Example:

A Ltd. + B Ltd. → A Ltd.

B Ltd. disappears and its undertaking is absorbed by A Ltd.

10. Amalgamation by Formation of a New Company

Two or more existing companies combine to form a **new company**.

Example:

A Ltd. + B Ltd. → C Ltd.

A Ltd. and B Ltd. cease to exist and C Ltd. becomes the resulting company.

11. Merger

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A merger involves the combination of companies into one entity.
The business, assets and liabilities are combined according to the scheme.
The purpose may include:

- expansion;
- economies of scale;
- reduction of competition;
- better utilisation of resources.

12. Fast-Track Merger

Under **Section 233**, certain classes of companies can use a simplified merger procedure.
It is generally applicable to prescribed classes such as:

- certain small companies;
- holding company and wholly-owned subsidiary;
- other prescribed classes.

It avoids the full procedure applicable to every conventional merger, subject to statutory conditions and approvals.

13. Cross-Border Merger

Under **Section 234**, an Indian company may merge or amalgamate with a foreign company subject to the Companies Act, rules and applicable regulatory requirements.
Such transactions also involve requirements under:

- FEMA;
- RBI regulations;
- foreign exchange laws;
- other applicable regulations.

14. Advantages of Amalgamation

1. Economies of Scale

Combined operations may reduce costs.

2. Better Management

Resources and managerial expertise can be combined.

3. Expansion

The resulting company may gain access to:

- new markets;
- technology;
- customers;
- assets.

4. Financial Strength

Combining resources can improve the financial position.

5. Reduction of Competition

Two competing businesses may combine into one organisation.

6. Efficient Utilisation of Resources

Human, financial and technological resources can be better utilised.

15. Disadvantages / Risks

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Amalgamation may also create:

- integration problems;
- employee displacement;
- management conflicts;
- valuation disputes;
- creditor concerns;
- regulatory issues;
- cultural differences between organisations.

Therefore, the scheme must be carefully structured and legally approved.

16. Protection of Creditors and Members

A reconstruction or amalgamation scheme should not unfairly prejudice:

- shareholders;
- creditors;
- employees;
- other stakeholders.

The Tribunal and statutory authorities consider the interests of affected parties while examining the scheme.

17. Important Cases

Hindustan Lever Employees' Union v. Hindustan Lever Ltd.

The Supreme Court considered the role of the court in examining schemes of amalgamation and recognised that courts/Tribunals should examine whether the statutory requirements have been satisfied and whether the scheme is fair and lawful.

Miheer H. Mafatlal v. Mafatlal Industries Ltd.

An important Supreme Court decision on schemes of arrangement.

The Court explained the principles governing judicial consideration of schemes and emphasised that the court should ensure that the statutory requirements are satisfied and that the scheme is not unfair or contrary to law.

18. Examination Diagram

RECONSTRUCTION

Existing Company

↓

Reorganisation

↓

Capital / Liabilities / Business

↓

Internal OR External Reconstruction

AMALGAMATION

A Ltd. + B Ltd.

↓

Scheme under Companies Act

↓

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NCLT + statutory approvals

↓

One resulting entity

19. Important Sections to Remember

Section	Subject
230	Compromise/Arrangement
231	Tribunal's power
232	Merger & Amalgamation
233	Fast-track merger
234	Merger with foreign company

🔥 **Exam memory:**

230 → Arrangement

232 → Merger/Amalgamation

233 → Fast-track merger

234 → Foreign company merger

20. Conclusion

Reconstruction and amalgamation are important methods of corporate reorganisation. **Reconstruction** primarily involves rearranging the financial or corporate structure of a business, whereas **amalgamation** involves combining two or more companies into one corporate structure.

The Companies Act, 2013 provides a statutory framework under **Sections 230–234**, with the NCLT playing a significant role in approving and supervising schemes.

⭐ **Best LL.M. conclusion:**

"Reconstruction and amalgamation are valuable instruments of corporate reorganisation. While reconstruction seeks to reorganise an existing undertaking or its financial structure, amalgamation combines two or more corporate undertakings. The statutory framework under Sections 230–234 of the Companies Act, 2013 seeks to facilitate genuine corporate restructuring while protecting the interests of shareholders, creditors and other stakeholders."

🔥 **One-minute revision**

Reconstruction = Reorganisation

Internal reconstruction = Same company continues

External reconstruction = Business transferred to new company

Amalgamation = Combination of companies

Absorption = A + B → A

New company = A + B → C

Section 230 = Arrangement

Section 232 = Merger/Amalgamation

Section 233 = Fast-track merger

Section 234 = Foreign merger

Q1. Discuss the Contents of Register of Members and Register of Debenture Holders

1. Introduction

A company is required to maintain certain **statutory registers** containing important information about its members and security holders.

The two important registers relevant to this question are:

1. **Register of Members**
2. **Register of Debenture-Holders**

These registers provide an official record of persons having membership or debenture interests in the company.

The principal provisions are contained in **Sections 88 and 94 of the Companies Act, 2013**, along with the applicable rules.

2. Register of Members

Meaning

The **Register of Members** is the official statutory record containing particulars of the members of the company and their shareholdings.

Section 88 requires every company to maintain a register of its members.

It is important evidence of the company's membership structure.

3. Contents of Register of Members

The register generally contains the following particulars:

1. Name of the Member

The name of every person whose name is entered as a member.

2. Address

The registered address of the member.

3. Number of Shares

The number of shares held by each member.

4. Share Details

Particulars such as:

- class of shares;
- distinctive numbers, where applicable;
- amount paid or credited as paid;
- amount unpaid, where applicable.

5. Date of Becoming a member

The date on which the person became a member.

6. Date of Cessation

Where a person ceases to be a member, the date of cessation is recorded.

7. Transfer/Transmission

Relevant particulars arising from:

- transfer of shares;
- transmission;
- other changes in membership.

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8. Joint Holders

Where shares are jointly held, the prescribed particulars of the joint holders are recorded.

4. Register of Members and Different Classes

Where applicable, the company maintains appropriate records relating to:

- equity shareholders;
- preference shareholders;
- other classes of members.

The register must accurately reflect the rights and holdings of the respective classes.

5. Beneficial Ownership

Modern company law also recognises situations where the **registered holder** and the **beneficial owner** are different.

The company is required to maintain the prescribed information relating to beneficial interests and beneficial ownership in accordance with the Companies Act and applicable rules.

6. Register of Debenture-Holders

A company issuing debentures is required to maintain a **Register of Debenture-Holders**.

It contains particulars of persons holding debentures issued by the company.

The register is important because debenture holders are **creditors of the company**, rather than members.

7. Contents of Register of Debenture-Holders

The register generally contains:

1. Name of Debenture Holder

Name of the person holding the debentures.

2. Address

Address of the debenture holder.

3. Number of Debentures

Number of debentures held.

4. Particulars of Debentures

Details such as:

- class/type;
- identification numbers where applicable;
- face value;
- terms of issue.

5. Amount Paid

Amount paid or credited as paid on the debentures.

6. Date of Becoming a Holder

Date on which the person became a debenture holder.

7. Transfer

Details of transfer of debentures.

8. Redemption

Particulars relating to redemption or cessation of the debenture holding.

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8. Changes in the Registers

The company must keep the registers updated whenever there is a change arising from:

- transfer;
- transmission;
- redemption;
- allotment;
- alteration of holdings;
- death of a holder;
- other legally recognised changes.

Thus, the registers must reflect the **current legal position**.

9. Inspection of Registers

The statutory registers are subject to inspection by members and other persons in accordance with the Companies Act and the applicable rules.

The company must provide inspection and copies where the Act requires it and subject to the prescribed conditions.

This promotes:

- transparency;
- accountability;
- protection of members and creditors.

10. Authentication and Maintenance

The registers should be properly maintained and authenticated in accordance with the applicable statutory requirements.

They may be maintained in:

- physical form; or
- electronic form,

where permitted by law.

The company must preserve the records for the period prescribed under the Act and Rules.

11. Importance of Register of Members

The Register of Members is important because it:

1. Identifies the members of the company.
2. Records their shareholding.
3. Helps determine voting rights.
4. Helps determine entitlement to dividend.
5. Provides evidence of membership.
6. Assists in issuing notices of meetings.
7. Helps maintain the company's ownership records.

12. Importance of Register of Debenture-Holders

It:

1. Identifies the company's debenture holders.
2. Records the company's debt securities.
3. Helps determine interest entitlements.

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4. Helps administer redemption.
5. Provides evidence of debenture holdings.
6. Assists the company in communicating with debenture holders.

13. Difference Between the Two Registers

Register of Members	**Register of Debenture-Holders**
Records members/shareholders	Records debenture holders
Relates to share capital	Relates to debt securities
Members have membership rights	Debenture holders are creditors
May have voting rights	Normally no voting rights
Dividend may be payable	Interest is generally payable
Records shareholding	Records debenture holding

14. Important Sections

Section 88

Registers of members, debenture-holders and other security holders.

Section 89

Declaration in respect of beneficial interest in shares.

Section 90

Register of significant beneficial owners.

Section 94

Place where registers and returns are to be kept.

These sections are useful for an LL.M. answer.

15. Examination Flowchart

REGISTER OF MEMBERS

Name + Address

↓

Shares held

↓

Class & particulars of shares

↓

Amount paid/unpaid

↓

Date of becoming member

↓

Transfer / transmission

↓

Date of cessation

REGISTER OF DEBENTURE-HOLDERS

Name + Address

↓

Number & class of debentures

↓

Face value / amount paid

↓

Date of holding

↓

Transfer

↓

Redemption / cessation

16. Conclusion

The Register of Members and Register of Debenture-Holders are important statutory records that provide a reliable picture of a company's membership and debt-security structure.

The **Register of Members** primarily records the persons having membership and shareholding interests, whereas the **Register of Debenture-Holders** records persons to whom the company owes money under its debenture obligations.

⭐ **Best LL.M. conclusion:**

"Maintenance of statutory registers is an essential aspect of corporate governance. The Register of Members safeguards the accuracy of membership and shareholding records, while the Register of Debenture-Holders ensures proper identification and administration of the company's debt-security holders. Together, these registers promote transparency, accountability and protection of stakeholder rights."

🔥 **Remember**

Section 88 → Registers

Section 89 → Beneficial interest

Section 90 → Significant Beneficial Owners

Section 94 → Place/maintenance of registers

Members → Shareholders

Debenture-holders → Creditors

Q5. Discuss the Restrictions on the Powers of the Board of Directors

1. Introduction

The **Board of Directors** is responsible for managing the affairs of a company. However, the Board does not possess unlimited powers.

Its powers are restricted by:

- the Companies Act, 2013;
- the Memorandum of Association;
- the Articles of Association;
- resolutions of shareholders;
- fiduciary duties of directors.

The principal provision concerning the general powers of the Board is **Section 179** of the Companies Act, 2013.

2. General Rule

Under **Section 179(1)**, the Board of Directors is entitled to exercise such powers and do such acts as the company itself is authorised to exercise, subject to:

1. the Companies Act;
2. the Memorandum;
3. the Articles; and
4. regulations made by the company in general meeting.

Therefore:

Board's powers are wide, but they are not unlimited.

3. Statutory Restrictions on Board Powers

A. Powers Reserved for Shareholders

Certain important matters cannot be dealt with by the Board alone and require approval of members.

For example, under **Section 180**, certain powers of the Board can be exercised only with the consent of the company by **special resolution**.

4. Restriction on Sale or Disposal of Undertaking

Under **Section 180(1)(a)**, the Board cannot, without the consent of the company by special resolution, sell, lease or otherwise dispose of:

the whole or substantially the whole of the undertaking of the company.

This prevents directors from disposing of the company's principal business assets without shareholder approval.

5. Restriction on Investment Compensation

The Board cannot invest the amount of compensation received by the company as a result of:

- merger;
- amalgamation;
- reconstruction;

otherwise than in trust securities without the approval required by Section 180, subject to the statutory framework.

6. Borrowing Beyond Paid-up Capital and Free Reserves

Under **Section 180(1)(c)**, the Board cannot borrow money where the money to be borrowed, together with money already borrowed by the company, exceeds the aggregate of:

- paid-up share capital; and
- free reserves,

apart from temporary loans obtained from the company's bankers in the ordinary course of business,

unless the company has approved it by **special resolution**.

Important:

Excess borrowing → Special Resolution

7. Restriction on Remitting Debt

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Under **Section 180(1)(d)**, the Board cannot remit, or give time for repayment of, any debt due from a director without the consent of the company by special resolution.
This prevents directors from improperly waiving company dues owed by them.

8. Powers Under Section 179

Certain important powers must be exercised through resolutions passed at meetings of the Board.
These include matters such as:

- making calls on shareholders;
- authorising buy-back;
- issuing securities;
- borrowing money;
- investing company funds;
- granting loans or giving guarantees/security;
- approving financial statements and Board's report;
- diversifying the business;
- approving amalgamation, merger or reconstruction;
- taking over another company or acquiring a controlling/substantial stake.

Therefore, individual directors generally cannot exercise such Board powers independently unless properly authorised.

9. Board Must Act Within the MOA

The Board cannot act beyond the company's **Memorandum of Association**.
If an act is **ultra vires the company**, it cannot generally be validated merely by a Board resolution.

Example:

If the company's objects do not authorise a particular activity, the Board cannot simply pass a resolution and undertake it as though it were within the company's powers.

10. Board Must Act Within Articles

The Board must also comply with the **Articles of Association**.
If the Articles prescribe a particular procedure or restriction, the Board must follow it.

11. Board Cannot Override Shareholders' Statutory Powers

The Board cannot exercise a power which the Companies Act specifically reserves for the members.
For example, where the Act requires a **special resolution**, the Board cannot substitute its own decision for that statutory approval.

12. Fiduciary Restrictions

Directors occupy a fiduciary position.
Under **Section 166**, directors must:

- act in accordance with the Articles;
- act in good faith;
- promote the objects of the company;
- act in the best interests of the company;

- exercise due care, skill and diligence;
- avoid situations involving direct or indirect conflict of interest;
- not obtain undue gain or advantage.

Therefore, Board powers cannot be used for personal benefit.

13. Restriction Against Improper Purpose

Directors must exercise their powers for the **purpose for which those powers were conferred**.

They cannot use corporate powers to:

- manipulate voting control;
- defeat minority shareholders;
- secure personal advantage;
- interfere improperly with corporate democracy.

Important case:

Piercy v. S. Mills & Co. Ltd.

The directors issued shares primarily to alter the balance of voting power.

The court treated the exercise of the power as improper.

Principle:

A power must be exercised for a proper purpose.

14. Restriction on Conflict of Interest

Directors must disclose their interests in contracts and arrangements as required by the Companies Act.

They must not use their position to obtain an improper personal benefit.

15. Restriction on Loans to Directors

The company is subject to statutory restrictions concerning loans, guarantees and security in favour of directors and connected persons.

The principal provision is:

Section 185

The purpose is to prevent misuse of company funds for the personal benefit of directors.

16. Restriction on Loans and Investments

Under **Section 186**, the company must comply with statutory limits and conditions concerning:

- loans;
- guarantees;
- security;
- acquisition of securities of other companies.

Where statutory thresholds are exceeded, the prescribed approval requirements must be followed.

17. Restriction on Related Party Transactions

Under **Section 188**, certain related-party transactions require prescribed approvals and compliance.

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This prevents directors from using their position to divert company resources to connected persons.

18. Board Must Act Collectively

The Board is a **collective body**.

Therefore, matters that legally belong to the Board should generally be decided through a properly convened Board meeting and resolution.

An individual director does not ordinarily possess all the powers of the Board merely by virtue of being a director.

19. Restrictions Under Articles and Shareholder Resolutions

The Articles may regulate the manner in which Board powers are exercised, provided the Articles do not conflict with the Companies Act.

The shareholders may also exercise powers reserved to them by law.

However, shareholders cannot simply take over powers which the law has specifically vested in the Board.

20. Consequences of Exceeding Powers

Where directors exceed their authority:

- the transaction may be challenged;
- the directors may incur personal liability;
- the company may refuse to be bound where the act is beyond its legal capacity;
- shareholders may seek appropriate remedies;
- regulatory penalties may apply where the Act is violated.

The exact consequence depends upon whether the act is:

- ultra vires the company;
- ultra vires the directors;
- merely an internal procedural irregularity.

21. Important Cases

1. Ashbury Railway Carriage & Iron Co. Ltd. v. Riche

An important case on **ultra vires acts**.

The company could not use its corporate powers for purposes outside its objects.

2. Hogg v. Cramphorn Ltd.

Illustrates the principle that directors must not exercise their powers for an improper purpose.

3. Piercy v. S. Mills & Co. Ltd.

Share allotment powers cannot be used merely to manipulate control of the company.

22. Important Sections to Remember

Section	Subject
166	Duties of directors
173	Board meetings
179	Powers of Board

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Section	Subject
180	Restrictions on powers of Board
184	Disclosure of interest
185	Loans to directors
186	Loans and investments
188	Related-party transactions

🔥 **Most important:**

Section 179 → General powers of Board

Section 180 → Restrictions on Board powers

23. Examination Chart

BOARD OF DIRECTORS

↓

Powers under Section 179

↓

Subject to:

→ Companies Act

→ MOA

→ AOA

→ Shareholder approvals

→ Fiduciary duties

↓

Section 180 restrictions

→ Disposal of undertaking

→ Excess borrowing

→ Remission of debt due from director

→ Other prescribed matters

↓

Board must act lawfully + in good faith + for proper purpose

24. Conclusion

The Board of Directors is the principal organ responsible for managing the company, but its powers are subject to important statutory, constitutional and fiduciary limitations.

Sections 179 and 180 are particularly important. The Board must also comply with the **MOA, AOA, shareholder resolutions and directors' duties under Section 166**.

⭐ **Best LL.M. conclusion:**

"The law confers extensive managerial powers on the Board of Directors but simultaneously imposes safeguards against their misuse. The restrictions under Sections 179 and 180, together with the Memorandum, Articles and fiduciary duties under Section 166, ensure that Board powers are exercised lawfully, collectively, in good faith and for the proper purposes of the company."

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🔥 **One-minute revision**

179 → Board powers

180 → Restrictions

166 → Directors' duties

185 → Loans to directors

186 → Loans/investments

188 → Related-party transactions

Ashbury → Ultra vires

Hogg / Piercy → Improper purpose

Q1. Examine the Restrictions on Commencement of Business

Important: This is a 2017 examination question, so the law has changed. For your LL.M. exam, write the **present Companies Act, 2013 position**, and mention the older position briefly if useful.

1. Introduction

Incorporation of a company does not always mean that it can immediately commence business or exercise borrowing powers.

The **Companies (Amendment) Act, 2019** introduced **Section 10A** into the Companies Act, 2013, imposing an important restriction on commencement of business by certain companies having share capital.

2. Section 10A — Declaration of Commencement of Business

Under **Section 10A(1)**, a company incorporated after the commencement of the 2019 amendment and **having share capital** cannot:

1. **commence any business**, or
2. **exercise any borrowing powers**,

unless the prescribed requirements are satisfied.

Therefore:

Incorporation

↓

Section 10A compliance

↓

Commencement of business + borrowing powers

3. First Requirement — Payment of Subscription Money

Every subscriber to the Memorandum must have **paid the value of the shares agreed to be taken by him**.

A declaration confirming this must be filed with the Registrar.

The declaration is made by a **director**.

4. Time Limit — 180 Days

The declaration must be filed:

Within 180 days from the date of incorporation.

The declaration is filed with the Registrar in the prescribed form.

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The MCA's current instruction for **Form INC-20A** confirms that the declaration is to be filed by a director within 180 days of incorporation.

5. Form INC-20A

The declaration is filed electronically in:

Form INC-20A — Declaration for Commencement of Business

under Section 10A read with Rule 23A of the Companies (Incorporation) Rules, 2014.

The form is filed by a director and is subject to the prescribed verification requirements.

6. Second Requirement — Verification of Registered Office

The company must also have filed with the Registrar the **verification of its registered office** under **Section 12(2)**.

Therefore, commencement of business requires compliance with both:

Requirement 1

Subscriber has paid the agreed share subscription + INC-20A declaration

Requirement 2

Registered office verification filed

7. Restriction on Borrowing Powers

This is an important point frequently missed by students.

Until the requirements of Section 10A are satisfied, the company cannot:

exercise its borrowing powers.

Thus, Section 10A restricts not only commencement of business but also the company's ability to borrow.

Exam line:

"Section 10A creates a statutory bar against commencement of business as well as exercise of borrowing powers until the prescribed declaration and registered-office requirements are fulfilled."

8. Penalty for Default

If the company fails to comply with Section 10A:

Company

The company is liable to a penalty of:

₹50,000

Officer in Default

Every officer who is in default is liable to:

₹1,000 for each day during which the default continues

subject to a maximum of:

₹1,00,000

These penalties are expressly provided in Section 10A(2).

9. Removal of Company's Name

There is an additional consequence.

If the declaration is not filed within **180 days**, and the Registrar has reasonable cause to believe that the company is **not carrying on any business or operations**, the Registrar may initiate action for removal of the company's name from the Register of Companies.

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This is provided under **Section 10A(3)**.

Section 248 also contains provisions concerning removal of names, including circumstances relating to non-payment of subscription and non-filing of the Section 10A declaration.

10. Why Was Section 10A Introduced?

The provision aims to prevent:

- shell companies;
- companies incorporated without genuine business activity;
- incorporation without actual subscription money;
- misuse of companies for fraudulent purposes;
- companies obtaining borrowing powers without genuine capital contribution.

It therefore provides an additional **post-incorporation compliance check**.

11. Difference Between Incorporation and Commencement of Business

This is a very good point for an LL.M. answer.

Incorporation

The company legally comes into existence as a separate legal entity.

Commencement of Business

The company having share capital must satisfy the additional statutory requirements under **Section 10A** before commencing business or exercising borrowing powers.

Therefore:

Incorporation ≠ automatic freedom to commence business or borrow.

12. Older Position — Important for Understanding the 2017 Question

The **2017 question predates the present Section 10A regime**.

Earlier, the Companies Act, 2013 had a different **Section 11**, which imposed a commencement-of-business requirement on certain companies having share capital.

That provision was subsequently **omitted**, and Section 10A was introduced by the **Companies (Amendment) Act, 2019**.

Therefore, don't reproduce the old Section 11 answer as the current law.

For your exam, write:

"The law relating to commencement of business has undergone amendment. The present position is governed principally by Section 10A."

That will show the examiner that you know the **current law**.

13. Important Provisions to Remember

Provision	**Subject**
Section 10A	Commencement of business
Section 10A(1)(a)	Subscriber payment + declaration
Section 10A(1)(b)	Registered-office verification
Section 10A(2)	Penalty
Section 10A(3)	Possible removal of name
Section 12	Registered office

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Provision	Subject
Section 248	Removal of company's name
Rule 23A	Declaration/INC-20A

14. Examination Flowchart

Company incorporated with share capital

↓

Subscribers pay agreed share value

↓

Registered office verification filed

↓

Director files INC-20A

↓

Within 180 days

↓

Section 10A compliance

↓

Company can commence business + exercise borrowing powers

15. Conclusion

Section 10A is an important safeguard against the misuse of newly incorporated companies. It requires a company having share capital to demonstrate that its subscribers have actually paid the agreed share capital and that its registered-office requirements have been complied with before it commences business or exercises borrowing powers.

⭐ **Best conclusion for LL.M. exam:**

"The restriction on commencement of business under Section 10A seeks to ensure that incorporation is followed by genuine capital contribution and actual corporate activity. By requiring the declaration of commencement of business within 180 days and compliance relating to the registered office, the law seeks to prevent the misuse of shell and inactive companies while promoting transparency and corporate discipline."

🔥 **One-minute revision**

Section 10A → Commencement

Share capital company → Restriction

Subscriber paid → Yes

INC-20A → Director's declaration

Time → 180 days

Registered office verification → Required

Business → Restricted until compliance

Borrowing → Restricted until compliance

Company penalty → ₹50,000

Officer → ₹1,000/day, max ₹1 lakh

Possible name removal → Section 10A(3)/Section 248

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